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SUPREME COURT, U.S.

## TRANSCRIPT OF RECORD

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Supreme Court of the United States.

OCTOBER TERM, 1948

No. 92

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H. P. HOOD & SONS, INC., PETITIONER,

vs.

C. CHESTER DuMOND, COMMISSIONER OF AGRICULTURE AND MARKETS OF THE STATE OF NEW YORK,

---

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, ALBANY COUNTY

---

PETITION FOR CERTIORARI FILED JUNE 11, 1948.

CERTIORARI GRANTED OCTOBER 11, 1948.

# SUPREME COURT OF THE UNITED STATES

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H. P. HOOD & SONS, INC., PETITIONER,

*vs.*

C. CHESTER DeMOND, COMMISSIONER OF AGRICULTURE AND MARKETS OF THE STATE OF NEW YORK

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[fol. 1]

**IN SUPREME COURT OF NEW YORK, APPELLATE  
DIVISION, THIRD DEPARTMENT**

In the Matter of the Application of H. P. HOOD & SONS, Inc.,  
Petitioner, For an Order Under Article 78 of the Civil  
Practice Act to Review a Determination Made by  
C. CHESTER DuMOND, as Commissioner of Agriculture  
and Markets of the State of New York, Respondent

**STATEMENT UNDER RULE 234**

This is a proceeding brought pursuant to Article 78 of  
the Civil Practice Act to review a determination made on  
the 30th day of April, 1946, by C. Chester DuMond, as  
Commisisoner of Agriculture and Markets of the State of  
New York, denying petitioner's application for an extension  
of petitioner's milk dealer's license to permit petitioner to  
equip and operate a milk plant at Greenwich, New York.  
The order made herein by the respondent was served upon  
the petitioner on May 6, 1946.

The proceeding was commenced on May 31, 1946, in the  
Supreme Court, Albany County, by the service of a notice  
[fol. 2] of motion and petition which was duly served upon  
the respondent, returnable at a Special Term to be held in  
and for the County of Albany on June 14, 1946.

Respondent, by notice of motion dated June 6, 1946, and  
duly served on June 7, 1946, returnable on June 14, 1946,  
moved to dismiss paragraph "15" of the petition.

By an order entered in the office of the Clerk of Albany  
County on August 19, 1946, paragraph "15" of the petition  
was stricken therefrom and the proceeding was transferred  
to the Appellate Division, Third Department, for dis-  
position.

Whalen, McNamee, Creble & Nichols (John R. Titus, Esq.,  
of counsel) of Albany, New York, appear for petitioner.  
Donald L. Brush, Esq., (Robert G. Blabey, Esq., of counsel)  
of Albany, New York, appears for the respondent. There  
has been no change of parties or attorneys herein.

[fol. 3] IN SUPREME COURT OF NEW YORK, ALBANY COUNTY  
SPECIAL TERM

ORDER TRANSFERRING PROCEEDINGS TO APPELLATE DIVISION

The Petitioner herein, H. P. Hood & Sons, Inc., having moved this Court, pursuant to Article 78 of the Civil Practice Act, for an order directing a review of so much of Respondent's determination herein as denied Petitioner's application for an extension of its milk license, and transferring and referring the proceedings herein to the Appellate Division of the Supreme Court, Third Department, for determination and for such other, further and different relief as to the Court may seem just and proper; and the Respondent herein having moved this Court, pursuant to Section 1293 of the Civil Practice Act, for an order dismissing as a matter of law that part of the petition found in the paragraph thereof designated "15"; and the Court [fol. 4] having read the petition herein, dated and verified the 27th day of May, 1946, and having read the answer of the Respondent, dated and verified the 10th day of June, 1946, and his return certified on the same day, and having heard John R. Titus, Esq., of Counsel on behalf of the Petitioner and Robert G. Blabey, Esq., of Counsel on behalf of the Respondent, and upon all the proceedings and papers had and filed herein,

Now, on motion of Donald L. Brush, Esq., Attorney for Respondent, it is

Ordered, that paragraph "15" of the petition, to wit:

"Petitioner respectfully submits that the Order in question, in refusing to grant an extension of the license to which petitioner was entitled, constituted a failure on the part of the Respondent to perform a duty of the Respondent enjoined upon him by law."

be stricken from the petition.

On motion of Whalen, McNamee, Creble & Nichols, Attorneys for Petitioner, it is further

Ordered, that the proceedings herein be transferred and referred to the Appellate Division, Third Department, for determination.

Isadore Bookstein, Justice Supreme Court.

Enter.

[fol. 5] IN SUPREME COURT OF NEW YORK, ALBANY COUNTY

NOTICE OF MOTION FOR ORDER DIRECTING REVIEW

To: C. Chester DuMond, as Commissioner of Agriculture & Markets of the State of New York:

SIR:

Please take notice that upon the annexed petition of H. P. Hood & Sons, Inc., verified on the 27th day of May, 1946, and upon all the proceedings heretofore had herein, the undersigned, pursuant to Section 78 of the Civil Practice Act will move this Court at a Special Term thereof to be held in and for the County of Albany, at the County Court House, in the City of Albany, N. Y., on the 14th day of June, 1946, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order directing a review of so much of Respondent's determination herein as denied petitioner's application for an extension of its milk license, and upon such review, annulling Respondent's determination denying petitioner's application for extension of said milk license, and directing the issuance of the license applied for by the petitioner, and transferring and referring all the proceedings herein to the Appellate Division of the Supreme Court, Third Department, for determination and for such other, further and different relief as to the Court may seem just and proper in the premises.

[fol. 6]— Please take further notice, that pursuant to Section 1291 of the Civil Practice Act, you are required to serve at least two days prior to the return day, a verified answer, annexing thereto the certified transcript of the records of the proceedings subject to this review and any and all affidavits or other written proof to be used herein..

Yours etc., Whalen, McNamee, Creble & Nichols,  
Attorneys for Petitioner, Office and Post Office  
Address: 75 State Street, Albany, N. Y.



## [fol. 7] IN SUPREME COURT OF NEW YORK, ALBANY COUNTY

## PETITION OF H. P. HOOD &amp; SONS, INC.

To the Supreme Court of the State of New York:

The petition of H. P. Hood & Sons, Inc., respectfully shows

1. At all times hereinafter mentioned petitioner was, and still is, a corporation organized and existing under the Laws of the Commonwealth of Massachusetts, having its principal place of business at 500 Rutherford Avenue, Boston, Massachusetts, and is authorized to do business in each of the several New England states and the State of New York.

2. On information and belief respondent herein is and at all times hereinafter mentioned was the Commissioner of Agriculture & Markets of the State of New York.

3. Petitioner, since its organization in the year 1920, has been engaged and still is engaged in business as a milk dealer, purchasing and selling milk, cream and dairy products and distributing the same to its trade in Boston, Massachusetts, and elsewhere. Petitioner's predecessor, a corporation organized under the Laws of the State of Maine, had engaged in such business since its organization in the year 1900. The predecessor of said Maine Corporation, a partnership, had been engaged in the milk business since the year 1846.

[fol. 8] 4. Petitioner has been and still is duly licensed as a milk dealer under Article 21 of the Agriculture & Markets Law of the State of New York having held license No. 51 for the license year ending March 31, 1946, and also holds such other licenses as may be required by any municipality, state, or agency of the Federal Government for the operation of petitioner's business in the various areas in which petitioner does business.

5. Prior to March 31, 1946, and on or about February 11, 1946, petitioner applied to Respondent for a milk dealer's license for the license year ending March 31, 1947, covering its existing business in the State of New York for the license year ending March 31, 1947, which application was granted by Respondent by Order dated April 30, 1946. A copy of said Order is annexed hereto as Schedule "A."

6. On or about January 30, 1946, petitioner also applied to Respondent for an extension to such license to permit petitioner to operate a milk plant at Greenwich, N. Y., which application was denied by the Respondent in the Order referred to in paragraph 5 hereof.

7. Two of the milk plants operated by petitioner and covered by the aforesaid license are situated at Eagle Bridge, N. Y., and at Salem, N. Y. During the "flush" or "peak" season approximately 2,000 40-quart cans of milk per day are handled at the Eagle Bridge plant which milk is supplied by approximately 400 producers, and from 1200 to 1300 40-quart cans of milk are handled at Salem, N. Y., [fol. 9] which is supplied by approximately 250 producers. All of this milk is sold in the Boston market area.

8. Regulations of the Boston Board of Health require that all milk must be received at milk plants and handled prior to 9 o'clock in the forenoon of each day unless such milk has been previously cooled. Due to the physical limitations of the Salem and Eagle Bridge plants operated by petitioner, considerable quantities of milk in the "flush" and "peak" seasons have been rejected due to inability of these plants to handle this volume of milk before 9 A. M. as required by the regulation of the Boston Board of Health.

9. Many producers who supply milk to the Eagle Bridge and Salem plants live nearer to Greenwich, N. Y., than to either of said present plants and if the proposed Greenwich plant were to be put in operation each producer would be allowed to deliver to the plant most convenient to him resulting in an earlier delivery at the plant and in a substantial saving to the producer through lower delivery costs, because of a shorter haul.

10. Prior to January 31, 1946, petitioner obtained an option to purchase the milk plant at Greenwich, N. Y., owned and formerly operated by Greenwich & Eastern Farm Products Co., and made extensive plans and preparations for modernization and repair of said plant.

11. Petitioner has recently modernized and enlarged its plant at Eagle Bridge, N. Y.

12. On March 13, 1946, Respondent gave notice of hearing to the petitioner and other parties interested in the [fol. 10] application of petitioner set forth in paragraphs

5 and 6 hereof, and such hearing was had before the Department of Agriculture & Markets, Division of Milk Control, on March 25, 1946. Petitioner appeared by its representatives and counsel and submitted oral and written proof to support its application for permission to open an additional plant at Greenwich, N. Y.

13. At the conclusion of said hearing, decision was reserved upon petitioner's application and subsequently on April 30, 1946, Respondent made an official order, as Commissioner of Agriculture & Markets of the State of New York, granting petitioner's application for a milk dealer's license for the license year ending March 31, 1947, insofar as existing business in New York State is concerned; and further ordered that the application for extension of such license to permit petitioner to operate a milk plant at Greenwich, N. Y., be denied, said denial to take effect immediately. Said Order and the findings of fact and conclusions accompanying same were served on petitioner on May 6, 1946. Copies of said Order, findings of fact and conclusions are annexed hereto and made a part hereof as Schedules "A," "B" and "C" respectively.

14. The conclusion made by Respondent upon which said Order was based was that the issuance of a license to petitioner which would permit petitioner to operate an additional plant, would tend to a destructive competition in a market already adequately served and would not be in the public interest.

[fol. 11] 15. Petitioner respectfully submits that the Order in question, in refusing to grant an extension of the license to which petitioner was entitled, constituted a failure on the part of the Respondent to perform a duty of the Respondent enjoined upon him by law; that such Order was made without competent proof of all the facts necessary to be proved in order to authorize the Commissioner in making the determination denying the petitioner's application.

16. Petitioner claims and alleges that it duly gave and made competent proof of all the facts necessary to be proved in order to warrant the granting of its application, and that the Respondent failed to make or offer any competent proof of all the facts necessary to be proved by the Respondent in order to authorize the making of the determination sought to be reviewed herein.

17. Petitioner further claims and alleges that upon all the evidence submitted there was such a preponderance of proof against the existence of any of those facts upon which the conclusions of the Respondent were based, as would cause a Justice of the Supreme Court, in an action triable by a jury, to set aside any verdict of a jury based upon the existence of such facts as against the weight of the evidence.

18. Petitioner claims and alleges that the action of the Respondent in denying its application for the extension of its license to permit the operation of a milk plant in Greenwich, N. Y., is illegal, improper, arbitrary and capricious.

[fol. 12] 19. None of the reasons set forth in Section 258-c of Article 21 of the Agriculture & Markets Law exists as would warrant or justify the making of the Order sought to be reviewed and petitioner alleges that it has not committed any of the acts set forth in subdivisions (a) to (m) of said Section 258-c.

20. This is an application for an Order pursuant to Article 78 of the Civil Practice Act and the purpose of this proceeding is to review so much of the Order made by the Respondent on April 30, 1946, as denied the application of the petitioner for an extension of its license to permit it to operate a milk plant in Greenwich, N. Y. Section 258-d of the Agriculture & Markets Law expressly authorizes the review of such an Order.

21. Thirty days have not elapsed since the service upon the petitioner of a copy of such Order, and no previous application for an Order to review the determination of the Commissioner has been made.

Wherefore, petitioner prays that an Order be made directing a review of the determination of the Respondent and, upon such review, that a final Order be made annulling the Respondent's determination and directing the Respondent to grant petitioner's application for an extension of its license as prayed for, and for such other, further and different relief as the Court may deem just and proper in the premises.

[fol. 13] In accordance with the Statutory Provisions upon the filing of the Respondent's answer and return herein, all



the proceedings herein should be transferred and referred to the Appellate Division, Third Department, for determination.

Dated: May 27, 1946.

H. P. Hood & Sons, Inc., by G. H. Hood, Jr., Treasurer. (Seal.)

Verified May 27, 1946.

[fol. 14] SCHEDULE "A" ATTACHED TO PETITION

STATE OF NEW YORK, DEPARTMENT OF AGRICULTURE & MARKETS, DIVISION OF MILK CONTROL

In the Matter of the Question as to whether or not application for a Milk Dealer's License for the license period ending March 31, 1947, shall be issued to H. P. Hood & Sons, Inc., 500 Rutherford Ave., Boston, Mass., pursuant to the provisions of Article 21 of the Agriculture and Markets Law.

#### OFFICIAL ORDER

The above entitled proceeding having regularly come on to be heard before Laurance L. Clough, Assistant Director of the Division of Milk Control, Department of Agriculture and Markets, duly designated for that purpose by the undersigned Commissioner, and said hearing having been had for the purpose of determining whether or not application for a Milk Dealer's License made by H. P. Hood & Sons, Inc., 500 Rutherford Ave., Boston, Mass., for the license period ending March 31, 1947, shall be granted, and the issues in this proceeding having regularly come on to be heard before the aforesaid Laurance L. Clough on the 25th [fol. 15] day of March 1946 at the Office of the Department of Agriculture and Markets, 20th Floor, State Office Building, Albany, N. Y., and the said Laurance L. Clough having heard the allegations and proofs of the respective parties, and due deliberation having been had, and it appearing that issuance of the license with the extension requested would tend to a destructive competition in a market already adequately served and that the issuance of such extension is not in the public interest;

Now, therefore, I, the undersigned Commissioner of the Department of Agriculture and Markets of the State of

New York, by virtue of the power and authority in me vested, do hereby

Order that the application of H. P. Hood & Sons, Inc., for a Milk Dealer's License for the license year ending March 31, 1947 be granted in so far as their existing business in New York State is concerned; and it — further ordered that the application for extension of such license to permit them to operate a milk plant at Greenwich, New York be, and the same hereby is denied, said denial to take effect immediately.

(S.) C. Chester Du Mond, Commissioner of the Department of Agriculture and Markets of the State of New York.

Dated and sealed at the City of Albany, New York, this 30th day of April, 1946.

[fol. 16] SCHEDULE "B" ATTACHED TO PETITION

STATE OF NEW YORK, DEPARTMENT OF AGRICULTURE AND MARKETS, DIVISION OF MILK CONTROL

In the Matter of the Question as to whether or not application for a Milk Dealer's License for the license period ending March 31, 1947, shall be issued to H. P. Hood & Sons, Inc., 500 Rutherford Ave., Boston, Mass., pursuant to the provisions of Article 21 of the Agriculture and Markets Law.

FINDINGS OF FACT

H. P. Hood & Sons, Inc., 500 Rutherford Ave., Boston, Mass., applied to the Commissioner of Agriculture and Markets for a Milk Dealer's license for the license year ending March 31, 1947. Applicant was duly notified of the time and place of a hearing to consider such application. Such hearing was held March 25, 1946 and applicant appeared by Counsel, John R. Titus, Esq., of Whalen, McNamee, Creble & Nichols.

Upon the basis of the evidence then received, I do hereby find as follows:

[fol. 17] 1—H. P. Hood & Sons, Inc., hereinafter referred to as applicant, made application for a Milk Dealer's License for the license year ending March 31, 1946, pursuant

to the provisions of Article 21 of the Agriculture and Markets Law. (Ex. 2)

2—Applicant then operated milk plants at Eagle Bridge, Salem and Norfolk, N. Y. (Ex. 2)

3—Milk Dealer's License No. 51 was issued to applicant on or about April 1, 1945 for the license year ending March 31, 1946. (Ex. 3)

4—Applicant has made application for a license for the license year ending March 31, 1947. (Ex. 5)

5—Applicant wishes to equip and operate an additional milk plant to be located at Greenwich, N. Y. (Ex. 4)

6—The milk now received by applicant at Eagle Bridge and Salem is shipped to Boston for fluid consumption. (H. R.; p. 6)

7—The Boston Board of Health requires that all milk be received at the country plant before 9:00 A.M. unless it is cooled before delivery. (H. R. p. 6)

8—Applicant has experienced some difficulty during the flush season because of the inability of the plant facilities to handle the milk by 9:00 A.M. (H. R. p. 6)

9—Some milk now received at Eagle Bridge is cooled before being delivered to the plant but a substantial portion of it is not. (H. R. p. 15)

[fol. 18] 10—Applicant's plant at Eagle Bridge has recently been modernized and to some extent the capacity has been enlarged. (H. R. p. 7)

11—Applicant proposes, if permitted to do so, to receive milk from producers at Greenwich, weigh, sample, test and cool the milk and ship it as fluid milk. (H. R. p. 7)

12—There will be no manufacturing done at Greenwich. (H. R. p. 7)

13—Applicant proposes, if permitted to operate such a plant, to divert about 200 cans of milk daily from Eagle Bridge and about 100 cans daily from Salem. (H. R. p. 6) (These are the quantities to be diverted in the flush period)

14—If applicant is permitted to operate the proposed plant, producers will be permitted to deliver to the plant

which is most convenient. No producer will be directed to deliver his milk to the new plant if he does not wish to do so. (H. R. p. 21)

15—Any producer who commences delivery to the Greenwich plant will continue to deliver there during the entire year if he wishes to. (H. R. p. 7)

16—If permission is granted to operate the new plant, applicant intends to take on 20 or 30 new producers at the Greenwich plant in addition to those who might change to that plant from Eagle Bridge and Salem. (H. R. p. 22)

17—A number of the present producers will save some hauling expenses by delivering their milk to Greenwich instead of Eagle Bridge and Salem. (H. R. p. 23)

[fol. 19] 18—There are several plants in the vicinity of Greenwich. Applicant operates the plant at Salem which is about 10 miles away and another one at Eagle Bridge about 12 miles away. (H. R. pp. 25, 26) Middletown Milk and Cream Company operates a plant at Fort Edward, also about 12 miles away. (H. R. p. 47)

Sheffield Farms operates a plant at Cambridge about 10 or 12 miles away. (H. R. p. 45)

Gold Medal Farms, Inc. operates a plant at Buskirk, a short distance from Eagle Bridge. (H. R. p. 55)

19—The plants at Ft. Edward, Cambridge and Buskirk can handle more milk. (H. R. pp. 45, 49, 56)

20—Some Troy dealers now obtain milk in the area where applicant purchases. (H. R. 35, 67)

21—The supply of milk for the Troy market during the last short season of October through January was inadequate. (H. R. p. 39)

22—There are producers who live within 10 miles of Greenwich who now deliver their milk to Glens Falls. (H. R. p. 41)

23—There was once a milk plant at Greenwich operated by the Dairymen's League. The plant has been closed. (H. R. p. 36)

24—The Dairymen's League also once operated a plant at Cambridge. That plant has also been closed. (H. R. p. 37)



## CONCLUSION

Applicant already has two milk plants, one at Eagle Bridge and one at Salem, New York. Applicant desires to operate a third plant in the vicinity to which some of the milk now being delivered to the existing plants would be deferred. In addition, applicant hopes to secure milk from 20 to 30 additional producers who are not now delivering to any of their plants.

There are three milk plants quite near Greenwich, aside from the two operated by applicant. These plants have the capacity to handle more milk than they are now handling. In addition, some Troy dealers and some Glens Falls dealers now obtain milk in the area where applicant is purchasing milk. At one time there were milk plants at Cambridge and Greenwich, which have since been closed.

The Commissioner takes judicial notice of that portion of the report of the New York State Temporary Commission on Agriculture in which it is shown that one of the factors affecting the economy of operating country milk plants, is the volume of milk handled. In 1944 there were more than 100 plants in New York State with a volume lower than 300 cans per day which is considered necessary for efficient operation. (See Report of the New York State Temporary Commission on Agriculture—Feb. 1946)

The Commissioner also takes judicial notice of that part of Bulletin 473 of the Cornell University Agricultural Experiment Station, entitled "The Cost of Handling Fluid Milk and Cream in Country Milk plants"; which appears on Page 118 and which reads as follows: "in each case the volume of milk received at the individual plants was by [fol. 21] far the most important factor affecting the cost per 100 pounds."

If applicant is permitted to equip and operate another milk plant in this territory, and to take on producers now delivering to plants other than those which it operates, it will tend to reduce the volume of milk received at the plants which lose those producers, and will tend to increase the cost of handling milk in those plants.

If applicant takes producers now delivering milk to local markets such as Troy, it will have a tendency to deprive such markets of a supply needed during the short season.

There is no evidence that any producer is without a market for his milk. There is no evidence that any producers not now delivering milk to applicant would receive any higher price, were they to deliver their milk to applicant's proposed plant.

The issuance of a license to applicant which would permit it to operate an additional plant, would tend to a destructive competition in a market already adequately served, and would not be in the public interest.

The application of H. P. Hood & Sons, Inc. for a Milk Dealer's License for the license year ending March 31, 1947 should be granted in so far as their existing business in New York State is concerned. Their application for extension of such license to permit them to operate a plant at Greenwich should be denied.

C. Chester Du Mond (S.), Commissioner of the Department of Agriculture and Markets of the State of New York.

Dated at Albany, New York this 30th day of April, 1946.

[fol. 22] IN SUPREME COURT OF NEW YORK

ALBANY COUNTY

RESPONDENT'S NOTICE OF MOTION

SIRS:

Please take notice that on the petition verified the 27th day of May, 1946, in the above entitled proceeding, and pursuant to section 1293 of the Civil Practice Act, the respondent Commissioner of Agriculture and Markets of the State of New York will make application to a Special Term of Supreme Court appointed to be held in and for the County of Albany, at the Court House in the City of Albany, New York, on the 14th day of June, 1946 (the day on which the petition herein is returnable), at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard, for an Order dismissing, as a matter of law, that part of the petition found in the paragraph thereof designated "15" which alleges that the order, which is the subject of review in this proceeding, denied an extension of license to which petitioner was entitled and that

such denial "constituted a failure on the part of the Respondent to perform a duty of the Respondent enjoined upon him by law" on the ground:

- (1) That such an application is in the nature of mandamus and the petition does not disclose that the petitioner has a clear, legal right to such relief; and
- (2) That even if the commissioner had acted contrary to any alleged right of the petitioner when he denied [fol. 23] its application for license extension (and such is in no way conceded) mandamus will not lie to correct an administrative abuse.

Dated: Albany, New York, June 6th, 1946.

Yours, etc., Donald E. Brush, Counsel to the Department of Agriculture and Markets of the State of New York. Robert G. Blabey, of Counsel. Attorneys for Respondent Commissioner C. Chester Du Mond. Office and Post Office Address: Alfred E. Smith State Office Building, Albany, New York.

To: Whalen, McNamee, Creble & Nichols, Esqs., Attorneys for Petitioner. Office and Post Office Address: 75 State Street, Albany, New York.

[fol. 24]

IN SUPREME COURT OF NEW YORK

ALBANY COUNTY

### ANSWER

The respondent Commissioner of Agriculture and Markets of the State of New York for his answer to the petition in this proceeding alleges as follows:

#### I.

Admits the allegations of the paragraphs of the petition designated: "1," "2," "5," "6," "7," "8," "9," "10," "11," "13," and "21."

#### II

Admits the allegation of the paragraph of the petition designated "4" except that as to said paragraph the commissioner denies any knowledge or information sufficient

to form a belief as to whether petitioner holds "such other licenses as may be required by any municipality, state, or agency of the Federal Government for the operation of petitioner's business in the various areas in which petitioner does business."

### III

Admits the allegations of the paragraph of the petition designated "14" in so far as therein alleged but submits that the commissioner's findings and order are the best [fol. 25] evidence of his action respecting petitioner's application for license and license extension.

### IV

Denies the allegations of the paragraphs of the petition designated "12," except as to said paragraph "12" it is admitted that notice of hearing was given to petitioner and that hearing was had before the department on March 25, 1946; "15"; "16"; "17"; "18," and "19."

### V

Denies the allegations of the paragraph of the petition designated "20" for the purpose of raising the legal issue therein framed, viz: "whether petitioner by its acceptance of the license issued has waived the right to contest the denial of its extension."

### VI

Denies any knowledge or information sufficient to form a belief as to the allegations of the paragraph of the petition designated "3" and therefore denies the same except that it is admitted the petitioner "has been engaged and still is engaged in business as a milk dealer."

### VII

*In accordance with the right granted by section 1293 of the Civil Practice Act, the respondent Commissioner of Agriculture and Markets of the State of New York raises by [fol. 26] separate motion returnable on the return day of this proceeding an objection in point of law which, in his opinion, warrants the dismissal of that part of the petition which alleges in the paragraph thereof designated "15" that the respondent failed to perform a duty enjoined upon him by law and such objection as set forth in said motion*



*is made a part of this answer as though fully incorporated herein.*

FOR A COMPLETE, SEPARATE AND AFFIRMATIVE DEFENSE TO THE PETITION HEREIN, THE RESPONDENT COMMISSONER ALLEGES:

### VIII

The petitioner H. P. Hood & Sons, Inc., without protest accepted and retained Milk Dealer's License No. 2996 for the statutory license period ending March 31, 1947, upon the terms and in accordance with the understanding expressed to it in a letter from the respondent commissioner (Division of Milk Control) dated May 4, 1946.

### IX

By its acceptance and retention of the license issued as aforesaid, petitioner H. P. Hood & Sons, Inc., is estopped to question the legality of the order limiting the scope of the license while at the same time retaining the benefits thereunder.

Wherefore, in conclusion the respondent commissioner respectfully submits that the petition should be forthwith [fol. 27] dismissed and his determination confirmed with costs.

In accordance with the requirements of Civil Practice Act section 1291, there is annexed to this answer a copy of the commissioner's Findings of Fact and Conclusion dated April 30, 1946 (attached thereto as Respondent's Exhibit A); the commissioner's Official Order dated April 30, 1946 (attached hereto as Respondent's Exhibit B), both of which exhibits are made a part hereof as though fully recited herein, and this answer is filed in accordance with law together with a certified transcript of the record of proceedings subject to review or consideration, and the Memorandum of Kenneth F. Fee dated May 3, 1946 (attached hereto as Respondent's Exhibit C).

Donald L. Brush, Counsel to the Department of Agriculture and Markets of the State of New York.  
Robert G. Blabey, Of Counsel, Attorneys for Respondent Commissioner C. Chester Du Mond, Office and Post Office Address: Alfred E. Smith State Office Building, Albany, New York.

(Verified June 10, 1946.)

[fol. 28] EXHIBIT "C" ATTACHED TO ANSWER

State of New York

Department of Agriculture and Markets

Division of Milk Control

In the Matter of The Question as to whether or not application for a Milk Dealer's License for the license period ending March 31, 1947, shall be issued to H. P. HOOD & SONS, INC., 500 Rutherford Ave., Boston, Mass., pursuant to the provisions of Article 21 of the Agriculture and Markets Law

*Memorandum*

The application of H. P. Hood & Sons, Inc., 500 Rutherford Ave. Boston, N. Y. for permission to equip and operate a milk plant at Greenwich, N. Y., pursuant to the provisions of Article 21 of the Agriculture and Markets Law, has been denied by the Commissioner for the reasons set forth in his Findings of Fact and Official Order dated April 30, 1946, which are attached hereto and hereby made a part hereof.

This memorandum is to be filed in the office of the Division of Milk Control pursuant to the provisions of the last paragraph of Section 258-c of the Agriculture and Markets Law.

(S.) Kenneth F. Fee, Director, Division of Milk Control.

*Dated at Albany, N. Y. May 3, 1946.*

[fol. 29] IN SUPREME COURT OF NEW YORK, ALBANY COUNTY

RETURN

Respondent Commissioner of Agriculture and Markets of the State of New York in accordance with the requirement of Civil Practice Act section 1291 hereby returns with his Answer the transcript of the record of proceedings subject to review or consideration herein and by his signature and the seal of the Department of Agriculture and Markets of the State of New York certifies the following:

(a) Copy of minutes of hearing held March 25, 1946.

(b) Copy of Notice of Hearing dated March 13, 1946, and two attached United States Post Office Return Receipts. (Exhibit No. 1 on Hearing of March 25, 1946.)

(c) Copy of petitioner's application for a milk dealer's license dated February 19, 1945, for the license period ending March 31, 1946. (Exhibit No. 2 on Hearing of March 25, 1946.)

(d) Copy of Milk Dealer's License No. 51 issued by respondent to petitioner for the license period ending March 31, 1946. (Exhibit No. 3 on Hearing of March 25, 1946.)

(e) Copy of petitioner's letter dated January 30, 1945, addressed to Mr. J. A. Conboy, Supervisor of Licensing of [fol. 30] the Division of Milk Control. (Exhibit No. 4 on Hearing of March 25, 1946.)

(f) Copy of petitioner's application for a milk dealer's license dated February 11, 1946, for the license period Ending March 31, 1947. (Exhibit No. 5 on Hearing of March 25, 1946.)

(g) Copy of letter dated May 4, 1946, written by Mr. J. A. Conboy, Supervisor of Licensing of the Division of Milk Control, enclosed with petitioner's Milk Dealer's License as issued for the license period ending March 31, 1947. (The license is in possession of petitioner and therefore is not returned herewith.)

(h) Copy of tabulation entitled: "Middletown Milk & Cream Co., Inc.—Number of Producers Delivering Milk to Fort Edward N. Y. Plant—January, 1941 to March, 1946." (Exhibit No. 6-A on Hearing of March 25, 1946.)

(i) Copy of chart. (Exhibit No. 6-B on Hearing of March 25, 1946.)

(j) Copy of respondent's Findings of Fact and Conclusion dated April 30, 1946. (These Findings and Conclusion are made Exhibit A or respondent's Answer and are therefore not returned herewith.)

(k) Copy of respondent's Official Order dated April 30, 1946. (This Order is made Exhibit B of respondent's Answer and is therefore not returned herewith.)

[fol. 31] (l) Copy of Memorandum of Director Kenneth F. Fee dated May 3, 1946. (This Memorandum is made

Exhibit C of Respondent's Answer and is therefore not returned herewith.)

C. Chester DuMond, Commissioner of Agriculture  
and Markets of the State of New York.

Dated and Sealed at the City of Albany, New York, this  
10th day of June, 1936. (Seal.)

[fol. 32] DOCUMENT "G" OF RETURN

Copy

May 4, 1946.

H. P. Hood & Sons, Inc., 500 Rutherford Avenue, Boston  
29, Massachusetts.

DEAR SIRs:

Inclosed find milk dealers license No. 2996 issued to you pursuant to the provisions of Article 21 of the Agriculture and Markets Law for the license year ending March 31, 1947. This license permits you to operate milk plants within the State of New York at Eagle Bridge, Norfolk, and Salem. Card certificates to be posted in said plants are inclosed herewith.

Department records show that your application for permission to operate a milk plant at Greenwich was denied by the Commissioner under date of April 30, 1946, and that an official order was mailed to you to that effect. Your license inclosed, therefore, does not permit you to operate a milk plant at Greenwich, New York.

Very truly yours, Division of Milk Control, (S.) J. A.  
Convoy, Supervisor of Licensing.

JAC:EGS.  
Enclosure.

1946-1947

## Milk Dealer's License, State of New York, 1946, 1947

## Department of Agriculture and Markets

## Division of Milk Control

Pursuant to the provisions of Article 21 of the Agriculture and Markets Law (Chapter 126 of the Laws of 1934 as amended), (Name of Licensee) H. P. Hood & Sons, Inc. of (Address) 500 Rutherford Avenue, Boston 9, Massachusetts hereinafter referred to as the licensee is, unless otherwise restricted, conditioned, or limited below, hereby licensed to purchase milk or cream from other licensed milk dealers, exclusive of cooperative associations. In case the licensee has filed a surety bond or has been relieved from so doing by the undersigned Commissioner, the licensee is, unless otherwise restricted, conditioned, or limited below, hereby licensed to purchase milk or cream from producers at the plant or plants named in the licensee's application only, and from cooperative associations licensed pursuant to Article 21 of the Agriculture and Markets Law. The licensee is, unless otherwise restricted, conditioned, or limited below, licensed to deal in, handle, distribute, or sell, in accordance with the intent indicated in the licensee's application, milk or cream; or both, in the place or places specifically named therein, and in no other place or places, [fol. 34] and then only on the route or number of routes of the character (wholesale or retail) indicated therein. No milk or cream shall be purchased from or sold to a dealer required to be licensed unless such dealer be duly licensed.

This license is valid until March 31, 1947, unless sooner revoked.

Dated at Albany, N. Y., May 4, 1946.

\$1,645 fee paid for license.

C. Chester Dumond, Commissioner of Agriculture and Markets, by Kenneth F. Fee, C, Director, Division of Milk Control.

This License cannot be sold or transferred.  
Referred to in Paragraph "G" of Return.



[fol. 35] State of New York, Department of Agriculture and Markets, Division of Milk Control

Hearing Held in the Office of the Department of Agriculture and Markets, 20th Floor, State Office Building, Albany, N. Y., on the 25th day of March, 1946, at 2 P. M.

In the Matter of The Question as to Whether or Not an Extension of MILK DEALER'S LICENSE No. 51, Heretofore Issued to H. P. Hood & Sons, Inc., 500 Rutherford Ave., Boston, Mass., for the License Period Ending March 31, 1946, Shall be Granted Pursuant to the Provisions of Article 21 of the Agriculture and Markets Law

### **Transcript of Hearing**

Hearing held before Mr. Laurance L. Clough, Assistant Director.

#### **Appearances:**

For the Department: Donald L. French, Hearing Deputy.

For the Applicant: Whalen, McNamee, Creble & Nichols, Counselors at Law, 75 State St., Albany, N. Y., by John R. Titus, Esq., of Counsel.

[fol. 36] For the Opposition:

Frederick Rohlf, Esq., representing Sheffield Farms Company.

Edward O. Mather, Esq., Executive Director, Milk Dealers Association of Metropolitan New York, Inc., New York; also Borden Farm Products Division of Borden Company, and The Middletown Milk & Cream Company, Yonkers, N. Y.

William Green, Jr., representing Green's Ice Cream Company, Schenectady, N. Y.

John P. Weatherwax, Esq., by James M. Strang, Esq., representing The Washington and Rensselaer Counties Co-operative Association, Inc., Cambridge, N. Y., and also for Gold Medal Farms, Inc., Bronx, N. Y. with a plant at Buskirk, N. Y.

Edward McClellan, representing the Washington and Rensselaer Counties Co-operative Association, Inc., Cambridge, N. Y.

Paul Steffen, Jr., representing Gold Medal Farms, Inc., 1157 E. 156th St., New York City.

Robert Lamont, Esq., representing the Dairymen's League Cooperative Association, Inc., Cobleskill, N. Y.

David R. Lalor, Esq., General Ice Cream Company, Schenectady, N. Y.

Thomas P. Waterhouse, representing Bellview Dairy, Schenectady.

John W. Burke, representing Vermont Milk & Cream Company, Middlebury, Vt.

Arthur J. Sliter, representing Sliter's Dairy, Troy, N. Y.

John W. Claydon, Executive Secretary, Troy Area Dairy Council, Inc., 1531 Sixth Ave., Troy, N. Y.

[fol. 37] Joseph F. Connolly, representing the Schenectady Dairy Council, Schenectady, N. Y.

#### OFFERS IN EVIDENCE

Mr. French: I produce from the records of the Division of Milk Control and offer in evidence copy of Notice of Hearing sent to H. P. Hood & Sons, Inc., and signed for the Commissioner by Kenneth F. Fee, Director, on the 13th day of March, 1946. Attached are United States Post Office return receipts.

You admit receipt of the notice, Counsel?

Mr. Titus: We do.

The Chair: The copy of the notice will be received and marked Exhibit No. 1.

Mr. French: I offer application for a renewal of Milk Dealer's License filed by H. P. Hood & Sons, Inc., appearing to have been signed on behalf of the corporation by G. H. Hood, Jr., Vice President and Treasurer, at Boston, Mass. on the 19th day of February, 1945.

Will you identify it, Counsel?

Mr. Titus: I have never seen it. I have no objection to it.

The Chair: It will be received and marked Exhibit No. 2.

Mr. French: I offer copy of Milk Dealer's License No. 51, heretofore issued to H. P. Hood & Sons, Inc. on April 1, 1945.

Mr. Titus: No objection.

The Chair: The copy of the license will be received and marked Exhibit No. 3.

Mr. French: I offer a letter on the stationery of H. P. Hood & Sons, Inc. dated January 30, 1946, addressed to Mr. J. A. Conboy, Supervisor of Licensing, and appearing to have been signed by Don N. Geyer.

Will you identify it, Counsel?

[fol. 38] Mr. Titus: No objection.

The Chair: The letter will be received and marked Exhibit No. 4.

Mr. French: I assume, Counsel, that you are now prepared to show cause to the Commissioner why the extension applied for should be granted to your corporation?

Mr. Titus: Yes.

Mr. French: Mr. Titus, are you willing to stipulate that any and all facts or evidence produced here today be considered in connection with a new application for a license filed by H. P. Hood & Sons, Inc. for the license period beginning April 1, 1946 and expiring March 31, 1947, in view of the fact that there are only a few days remaining of the current license year?

Mr. Titus: We so stipulate.

Mr. French: Then I will offer at this time the application for the license period ending March 31, 1947, which appears to have been signed on behalf of the corporation by G. H. Hood, Jr., at Boston, Mass., on the 11th day of February, 1946.

Mr. Titus: No objection.

The Chair: I assume you will have no objection to the notice being amended to include consideration of this new application.

Mr. Titus: No objection.

The Chair: The application will be received in evidence and marked Exhibit No. 5.

Mr. French: Now, before we proceed, is there anyone in the room whose appearance has not been noted on the record and who wishes to be noted on the record?

(No response.)

Mr. French: It is all yours, Mr. Titus.

Mr. Titus: I will call Mr. W. O. Whiting.

[fol. 39] W. O. WHITING, being duly sworn, testified as follows:

By Mr. Titus:

Q. Mr. Whiting, you are employed by whom?

A. H. P. Hood & Sons, Inc.

Q. And in what capacity?

A. Assistant Country Production Manager.

Q. Where is your office?

A. 500 Rutherford Avenue, Boston, Mass.

Q. Will you explain for the record and for the Commissioner your duties, particularly as relating to the application before the Commissioner at the present time?

A. Assisting the Production Manager of Hood & Sons in securing adequate supplies of milk and maintenance of the quality of that milk for H. P. Hood & Sons, Inc.

Q. Does Hood operate plants at the present time in Eagle Bridge and Salem, N. Y.?

A. They do.

Q. In your capacity, are you familiar with the operations of these plants?

A. Yes.

Q. Are you familiar with the application of Hood and plans if the application is granted with relation to the purchase and re-opening of the Greenwich and Easton Farm Products Company at Greenwich, N. Y.?

A. Yes, I am.

Q. Will you, for the record, explain to the Commissioner somewhat in detail your present operations at Eagle Bridge and Salem?

A. We have two plants as indicated at Eagle Bridge and Salem, N. Y. The flush season peak in Eagle Bridge is about 2,000 jugs of milk a day.

Q. Possibly it will be well to indicate in the record that a jug is a 40-quart can.

[fol. 40] A. Salem, N. Y.—the other plant which we operate—has a peak production of 1200 to 1500 jugs of milk per day. The primary reason for our applying—

Q. Before we come to that, what do you do with this milk?

A. This milk is received, weighed, sampled, cooled and placed in tank cars or tank trucks for shipment, and shipped to the City of Boston for fluid milk consumption.

Q. Is any manufacturing done at any of these plants?

A. Not at the present time.

Q. Go ahead.

A. The primary objective for our requesting an extension of the license to include the Greenwich, N. Y. location is occasioned by the volume of milk handled in the peak at the two locations—Salem and Eagle Bridge. The Boston Board of Health regulations call for the receiving of all milk and handling of the same prior to 9 A. M. unless the morning's



milk is cooled. If the morning's milk is cooled on the farm, it may then be handled at a later hour. In our peak of the season we have been considerably embarrassed by the morning's milk having been rejected by the Boston Board of Health, due to the inability of our plant facilities to handle the peak volume before 9 A. M.

The granting of an extension of the license for Greenwich would enable us to take approximately 200 jugs off the load of the Eagle Bridge plant at the peak, and about 100 jugs of milk off the Salem plant at the peak of production. This would be invaluable in getting milk weighed and cooled and into the tank car under the time deal line as established by the Boston Board of Health.

[fol. 41] The second reason, and perhaps equally as important, is the fact that the granting of a license for establishing a plant at Greenwich would enable us to better serve the producers in that vicinity—a great many who already sell to us—by reduction in their trucking costs. We would hope to not only handle the supply of milk which we presently enjoy at our Eagle Bridge and Salem plants, but such other milk in that vicinity as might see fit to make its deliveries to us at that plant.

Q. In other words, several of your producers who currently deliver to you would be benefited if the Greenwich plant were opened in the way of delivery of their milk?

A. That is correct.

Q. Have you any idea how many producers?

A. I do not know. I gave you the number of jugs. Mr. Gould, our local representative, could give you more information as to the number of producers.

Q. You have recently enlarged the Eagle Bridge plant?

A. That is correct. We have recently modernized the plant and to some extent enlarged the capacity.

Q. What is it now equipped to do?

A. The same process that took place in the old plant plus the addition of cheese vats for the manufacture of cottage cheese, plus two powder rolls which may or may not be used for operations this peak. Ultimately there will be a powder operation at Eagle Bridge.

Q. What do you plan to do at Greenwich?

A. We plan to receive milk, weigh, sample, test, cool and ship as fluid milk from that plant. We do not contemplate manufacturing at that plant.



Q. If during the peak season it becomes necessary to [fol. 42] manufacture will those producers, who normally would deliver to the Greenwich plant keep on delivering there?

A. Yes. Those producers will deliver. There will be a year around operation at the Greenwich plant. There will be no conversion of producers to any other plant regardless of manufacture.

Q. Isn't it a fact that any producer that you take on or have at the present time will be kept throughout the entire year and not just taken during the short season?

A. It is. We contemplate a year around operation for the benefit of all producers at that point.

Q. Any surplus of fluid milk you will manufacture?

A. At some point, but not at Greenwich.

Q. I mean at some plant?

A. That is right.

Q. Is all milk delivered to your plant by the producers, or are arrangements made by the producers themselves?

A. That is correct—either by the producers or truckmen whom they hire for that purpose.

Q. Most of the milk will be sent to Boston?

A. Correct.

Q. Some will be diverted elsewhere?

A. No. We sell milk in the Boston market area so-called. Much of the milk may be sold to so-called secondary markets, but it is all Boston pooled milk.

Q. Is it the intention of the Hood Company to undertake expansion, repairs and improvement of the old Greenwich and Easton Farm Products Company's plant in Greenwich?

A. It is.

Q. Along what lines?

A. We contemplate extensive repairs to the plant as it exists in Greenwich, and also the installation of modern and [fol. 43] adequate machinery for the purpose of handling milk as outlined.

Q. Then, to sum it up, the purpose of the Hood Company is three-fold in this application. First—and this is not in the order of importance:

No. 1. To enable the Hood Company to meet their Boston Board of Health dead line.

No. 2. To afford a more available plant for its producers.

No. 3. To allow Hood to expand its operations in the vicinity of Greenwich.

A. That is right.

Mr. French:

Q. Where is the machinery coming from, Mr. Whiting, to equip this plant at Greenwich?

A. We have some of the machinery presently available, which will be from the Eagle Bridge plant, machinery of slightly lesser capacity than we contemplated installing. Some of the machinery is already on purchase, and some of it is salvaged in our Boston headquarters.

Q. All of this machinery when installed will have to meet the requirements of the Health Department in Boston?

A. That is correct.

Q. How much of an outlay will be involved in re-conditioning?

A. We estimate it will cost between \$40,000 and \$50,000 to make a proper receiving station.

Q. That includes the equipment you are going to have to purchase?

A. That is right, together with repairs on the building.

Q. Have Hood & Sons purchased the building or leased it?

A. No. We have an option on the building to purchase it.

[fol. 44] Q. You want to make this a permanent operation—not something as a stop gap because of the shortage of milk?

A. That is right—a permanent operation.

Q. Now you mentioned 300 cans of milk—200 that might be diverted from Eagle Bridge and 100 from Salem. Would that be the maximum receipt of milk at this plant, or do you anticipate and hope for new producers to come to that plant?

A. That is correct. We both anticipate and hope for new producers at the plant.

Q. Have you made a survey of the producers in the Greenwich area who are not now shipping to you to see how many you can obtain?

A. Sure.

Q. What is your finding?

A. I believe Mr. Gould estimates that we might receive 150 jugs in the short season more than the figures which we gave you.

Q. Making the total receipts in the short period about 450?

A. No. It will be in the short season about 350 jugs.

Q. Then the figures of 300 to be shipped from Eagle Bridge and Salem are not the short figures?

A. No. Those are the peak figures.

Q. What is contemplated as the peak capacity of the new plant?

A. We would have a plant capacity for handling and properly cooling and taking care of 800 jugs of milk a day.

Q. When you say "jug," you do mean a can?

A. As long as I am in New York, I mean a can.

Q. You do not know how many producers would be shipping this 150 cans that you hope to obtain in the Greenwich area?

A. No. Mr. Gould might be able to give that to you.

Q. Is Mr. Gould here?

A. Yes, he is.

[fol. 45] Q. You do not personally know where those producers are now shipping?

A. No. At least I do not know the distribution of shipments.

Q. How many of the present producers who are shipping to Eagle Bridge or Salem that you contemplate changing and shipping to this other receiving station will be benefited by a shorter haul?

A. There again I will have to refer that question to Mr. Gould.

Mr. French: That is all for this witness at the moment.

Mr. Titus: One more question.

Mr. Titus:

Q. Boston alone has been mentioned in connection with Hood. Hood operates throughout the New England States, does it not?

A. Correct.

Q. There are several outlets for the fluid milk?

A. We have 26 country plants, not counting the secondary market facilities which we have.

Mr. Titus: That is all.

### The Chair:

Q. Mr. Whiting, I assume that your company pays the Boston Federal Order price for milk at these plants. Can you tell us for the record what that price is in terms of dollars and cents at Salem and Eagle Bridge.

A. There again, as to the price I would rather Mr. Gould would answer that. I believe it is \$3.64, but I would rather Mr. Gould would answer it.

The Chair: Are there any questions of Mr. Whiting?

[fol. 46] Mr. Rohlf: I would like to ask one question regarding the operations at Eagle Bridge.

Q. What are your contemplated plans with regard to the manufacture of cheese and powder there? What size operation do you intend to carry out?

A. Only a very small cheese operation there and powder roll facilities to take care of the week-end peak occasioned by the five-day delivery.

Q. Will the powder operation be an all year around affair?

A. No—probably not over six week-ends—not an all week operation.

Q. It is only during the flush season?

A. Correct.

Q. No further questions.

### Mr. Mather:

Q. Are there any other facilities in addition to the cheese vats and powder rolls? What other manufacturing operations have there been at Eagle Bridge?

A. If I left you with the impression that they are manufacturing, they are not. What I mean is there would be fluid milk handling and that only.

Q. You said you had approximately 3,000 cans at the peak at Eagle Bridge. What would you get in during the low point?

A. About a thousand jugs.

Q. What is the capacity of the Eagle Bridge plant?

A. The contemplated capacity would be 40,000 to 60,000 pounds per hour. That is the new plant.

Q. Will you translate that into jugs or cans for me?

A. I guess so—about 500.

[fol. 47] Q. About how many producers are delivering to Eagle Bridge?

A. 400.

Q. What is the capacity of the Salem plant?

Mr. French: I think we had better get this from Mr. Gould.

Q. Do you know, Mr. Whiting, that the New York regulations also require delivery of the morning milk before 9:00 A. M., otherwise it must be cooled?

A. That is right—60 degrees temperature. Ours is 50 degrees.

Q. Can you tell me the number of jugs of milk that were rejected during the last 12 months period for being delivered after 9:00 A. M.?

A. No, I cannot. Mr. Gould can answer that. We had a substantial rejection of producers, but the number of jugs I could not say.

Q. Can you tell me what the trucking rates are at the Eagle Bridge or Salem Branches?

A. Yes. There is a range of 15 to 25 cents per cwt. in those plants.

Q. Approximately what territory is covered? In other words, how far out is the longest route from Eagle Bridge plant?

A. I would rather Mr. Gould would answer that.

Q. I think you have answered it, but I would like to get it again.

What is the proposed capacity of the Greenwich plant?

A. We plan to have a plant sufficient to handle 800 jugs of milk a day.

Q. An hour or a day?

A. 800 a day.

Q. Does the company plan having this plant under Federal Order No. 27 or is it going to be under Federal Order No. 4?

A. Federal Order No. 4.

[fol. 48] Q. Do you have any premium payments at either Eagle Bridge or Salem?

A. We do not.

Q. Do you contemplate any premium plan at Greenwich?

A. We do not.

The Chair: Is there anyone else?



Mr. Lamont:

Q. I would like to inquire what freight zone the proposed plant would be in under Federal Order No. 4?

The Chair: Possibly it would be well to have the record show that the Federal Order No. 4 is the Federal Order for the Boston Market.

A. I hesitate to answer that, sir. I think Mr. Gould either knows or could estimate it closer than I could. I do not know in what zone that does fall in Greenwich.

Q. Are you familiar with the construction of the milk plant at Eagle Bridge?

A. Yes—to some extent.

Q. Will you describe what facilities are being provided there for the receiving of milk from producers?

A. Well, we have a single intake. We do not have a double intake contemplated for that plant. As stated, it will have between 40,000 to 60,000 pound per hour capacity. That means the ability to handle that amount, cool it and put it in tank cars. That means a can washer sufficient to handle it, cabinet sufficient to cool it and pumps, etc.

Q. What capacity can washer are you installing?

A. We have, I believe, a 14 to 16 can a minute washer.

[fol. 49] Q. What is the capacity of the can washer in the present Eagle Bridge plant?

A. About a 12 to 14 can a minute washer.

Q. What storage tank capacity will you have at the new Eagle Bridge plant?

A. We will have 600 jugs storage at the new plant.

Q. Will you have any separate storage for skim?

A. We have a 100-can tank for skim storage.

Q. What storage facilities do you have or have you had at the Eagle Bridge plant that you are now operating?

A. We have not had storage facilities at that plant.

Q. As a plant operator, what can you say as to the effect of storage facilities and can washer capacity as affecting the efficiency of receiving milk as delivered by producers?

A. I can say this—that in the case of the Eagle Bridge plant we have not been bothered by lack of storage facilities in the plant since we have had tank car service and tank cars available for storage. The new can washer will, of course, step up the capacity.

Q. What facilities will you have for cooling milk in the new plant?

A. We have cabinet coolers.

Q. You are speaking of Eagle Bridge?

A. Yes.

Q. What will be the capacity per hour of those coolers?

A. 20,000 to 25,000 pounds each, and there are two of them.

Q. Per hour?

A. That is right.

Q. Will you compare that with the cooling capacity of the Eagle Bridge plant as now operating?

A. Eagle Bridge plant has about 35,000 pounds per hour [fol. 50] capacity at the present time with the coolers which we have.

Q. How many hours per day do you operate this plant normally to receive milk from producers?

A. The peak season or the short season?

Q. The peak season?

A. That plant starts its operations about 7 o'clock in the morning and continues to operate until 1:30 P. M.

Q. So that some of the milk that comes in is now cool—the morning milk is cool?

A. Correct.

Q. Is there a substantial proportion of it cool?

A. No.

Q. How many weigh cans will you have on the receiving deck at Eagle Bridge?

A. One. It will be a double compartment.

Q. How is milk delivered at Eagle Bridge for the most part—by motor truck?

A. That is correct. There is very little so-called self-delivered milk there.

Q. By self-delivered milk you mean milk delivered by the farmers by their own trucks?

A. That is right.

Mr. Lamont: That is all.

The Chair: Are there any other questions?

Mr. Steffen: Mr. Whiting states that some of this 300 cans is in the vicinity of Greenwich.

Q. Isn't it a fact that some of it extends pretty near as close to Eagle Bridge and Salem as it does to Greenwich?

A. I would rather Mr. Gould would answer that question. I am not familiar with the locations of the producers.

[fol. 51] Q. In your new plant you claim you will have a 14-can a minute washer and likewise capacity on your coolers. Isn't it a fact that it would only take 14 minutes to dump the 200 cans of milk you say you are going to divert daily to Greenwich. I am talking about the 200 cans of milk they want to divert from Eagle Bridge. With the capacity at the new plant at Eagle Bridge, it would take only 14 minutes to handle that.

A. I have not figured it out. Possibly the figures are not too accurate.

The Chair: Is there anything else?

Mr. Steffen: I understand there has been appropriated \$180,000 for this new plant?

Mr. Titus: What plant are we talking about?

Mr. Steffen: Eagle Bridge.

The Chair: I do not think there has been any testimony to that effect.

Mr. Steffen:

Q. Can you tell us what is appropriated by the company?

Mr. Titus: I object to that question.

The Chair: Sustained.

Q. What I have in mind—since this is such a modern plant—I understand it is to be completed this next month. Rather than going to the expense of an additional receiving plant, why not put in two receiving plants at Eagle Bridge?

Mr. Titus: Is that a question or a statement for the record.

[fol. 52] Mr. Steffens: A statement.

Mr. Titus: I move that it be stricken out.

The Chair: That statement will be stricken from the record.

Mr. Lalor:

Q. Mr. Whiting, at the present time are there any grade A producers shipping to Salem or Eagle Bridge?

A. No grade A producers.

Mr. Steffen:

Q. Isn't it a fact that during the shortage you offered premiums for Grade A milk and bought milk during this present shortage on premiums paid for Grade A?

Mr. Titus: I object unless it is restricted to some locality.

Q. In Eagle Bridge?

A. I have no objection to answering that. Yes, we purchased Grade A during the short season. That has been discontinued as of the present time. We still buy Golden Guernsey Milk at Eagle Bridge.

Q. This particular Grade A you paid up to 40 cents per cwt. on the basis of bacteria count—fat not considered.

A. That is correct.

Q. You offered that to various producers as an inducement to ship milk to that plant who were not shipping to your plant at that particular time.

Mr. Titus: I object to the form of that question.

The Chair: Ask him if he did do it for that purpose?

[fol. 53] A. Yes, we did.

Q. And now since the shortage is over, you discontinued it?

A. That is correct.

Q. You might do it next year during the shortage?

A. It is entirely possible. I hope so.

Q. You might offer that premium at Greenwich if you opened a new plant and was granted a license?

A. No, I think not, since it is common sense to secure that milk at the nearest point.

Q. If you offered it at Eagle Bridge, isn't it possible that you might offer it at Greenwich as an inducement?

A. We did not use it as an inducement. We offered it because we needed it.

Mr. Mather:

Q. It is true, is it not, that Boston like a great many eastern markets last fall was extremely short of milk?

A. That is correct.

Q. It is true, is it not, Mr. Whiting, that generally speaking the butterfat differential on the Boston Order is greater than on the New York Order? In making payments to producers at Eagle Bridge and Salem plants where the milk

tests above 3.7, which is the breaking point on the Boston Order, you pay the higher Boston differential for butterfat in excess of 3.7, and where it falls below 3.7 you deduct only the New York butterfat differential?

A. No, that is not true.

Q. You pay or deduct the same butterfat differential going up and down?

A. That is correct.

[fol. 54] The Chair:

Q. Is it possible for you to receive both Grade A and Grade B milk at the same plant?

A. No, it isn't. That milk had to go to Boston in the original container from the farm and be dumped at the Boston plant. It is not possible with the facilities we have to receive both.

Q. So that it would not be possible, as a matter of fact, at any of your plants to handle both Grade A and Grade B milk?

A. That is correct.

Q. The only way you can handle it is to ship it directly?

A. That is right.

Mr. Steffens:

Q. Didn't Mr. Whiting state that they did receive Grade A at Eagle Bridge?

A. I don't think so. I said we bought and purchased Grade A, which we did, and re-shipped it to Boston in the original containers.

Q. Where did you weigh it?

A. It was weighed in Boston.

Q. It was delivered at Eagle Bridge on the platform?

A. Delivered on the platform, but not put through the plant.

The Chair: Are there any more questions?

(No response.)



[fol. 55] At this time GEORGE L. GOULD was duly sworn, and testified as follows:

By Mr. Titus:

Q. What is your full name?

A. George L. Gould.

Q. By whom are you employed?

A. H. P. Hood & Sons, Inc.

Q. In what capacity?

A. Division Superintendent.

Q. What territory does it cover?

A. Country Division.

Q. What territory do you have?

A. Eagle Bridge, Salem, Bridgeport and Vermont.

Q. How long have you had that?

A. I have had Eagle Bridge and Salem over a period. I have worked for Hood 38 years.

Q. That is about since 1908?

A. Vermont—a couple of years up there—the last two years.

Q. You have been familiar with this section for the past 38 years?

A. Yes, sir.

Q. How long has Hood been in there?

A. Since 1901 or 1903. I forget which it is.

Q. You are familiar with the Eagle Bridge and Salem plants?

A. Yes.

Q. You are acquainted with the situation relating to the contemplated operation at Greenwich?

A. I am.

Q. Will you describe, perhaps in more detail than Mr. Whiting, what is done at the present time at the Eagle Bridge plant—how much milk is handled there, how many producers deliver and so on?

A. We have around 400 producers at Eagle Bridge, and it is running at around 235 to 250 at Salem.

[fol. 56] Q. The 400 producers at Eagle Bridge deliver how much milk?

A. Around one to two thousand cans.

Q. And at Salem?

A. About 50,000 to 100,000 pounds.

Q. As Mr. Whiting testified, if this application is granted and the Greenwich plant is reopened, certain producers

who now deliver to your other two plants will deliver to Greenwich?

A. That is right.

Q. From where will those producers come?

A. They are presently delivering to us: They live in Argyle, Greenwich, Saratoga section, Easton.

Q. The producers who will deliver to Greenwich will be closer to Greenwich than to either of the other two plants?

A. That is right.

Q. From how far north do they come?

A. From Argyle, Saratoga, Easton and right around Greenwich locally.

Q. How about Whitehall?

A. They would not come from there.

Q. There was quite some discussion referring to the Eagle Bridge plant as a new plant. Is that plant in operation today—the so-called new plant at Eagle Bridge?

A. It is not.

Q. When will that go in operation?

A. Sometime within 30 days probably.

Q. Are the alterations and improvements substantially completed?

A. Substantially completed.

Q. And they will go into operation within the next 30 days?

A. We hope to.

Q. In your opinion, how many producers which you now [fol. 57] have will benefit by the granting of this petition to open the plant at Greenwich?

A. 80 to 100.

Q. Will anyone have to deliver at Greenwich, or will they deliver at Greenwich where Salem or Eagle Bridge would be closer? In other words, is the producer going to be able to deliver to the plant most convenient to him?

A. That is right. He has his choice.

Q. It is up to him. You will not direct any producer to deliver to any particular plant?

A. That is right.

Q. Mr. Whiting stated that it is your intention to acquire additional producers for the Greenwich plant?

A. That is right.

Q. How many producers do you contemplate or do you anticipate you will acquire or attempt to acquire?

A. Why, we might possibly get 20 or 30 more that are in that area.

Q. Has someone interviewed them?

A. We have not interviewed them telling them that we were going to have a creamery at Greenwich. In the ordinary procedure of buying milk for our present plants, we see more or less of them.

Q. During the time that you have been connected with the milk industry in that area, isn't it a fact that this territory has been commonly known as the Boston Milk Shed?

A. That is right. Whiting operated a plant there for possibly 20 years or longer before he sold to the Dairymen's League. In fact, all of the territory from Johnsonville even where Gold Medal operates now, and clear over to Saratoga, where Dake operates, that territory was all developed by the Boston milk shed. Later on, back in the 30's Whiting sold out to the Dairymen's League, and that is one [fol. 58] thing possibly that makes the market short in Boston. They buy milk all the way from Johnsonville clear up through Danbury and up in Vermont. Whiting has possibly 6 or 7 cars a month going to the Boston market.

Q. It has been stated by Mr. Whiting that no matter how much milk you get from your producers during the peak season, you will buy that milk?

A. That is correct. We always have.

Q. How long has it been, or did you ever turn any producers loose after the short season was over?

A. It is not policy to do so.

Q. You have not done it?

A. That is right.

Q. If you take them you keep them if you can.

A. That is right.

Mr. French:

Q. What is the greatest distance that the present producers who will be changed to the Greenwich plant would have to ship their milk in order to get it into Greenwich?

A. You are speaking of the Greenwich plant?

Q. That is right.

A. It would cut the distance between Greenwich and Eagle Bridge in the neighborhood of 12 miles. They would save that much. We would probably go back to get the Eagle Bridge supply in some cases as far as 30 miles.

Q. You said the distance was 12 miles. You mean the saving would be 12 miles.

A. That is right.

There is a large proportion of that milk that comes from Saratoga across Schuyler Bridge that could drop off at Greenwich. They would save 12 miles. A lot of local dairies around Greenwich, and some of them near Buskirk, [fol. 59] and they would rather go to Greenwich. They might not save quite so much, but would save from 8 to 12 miles.

Q. Would you say that 15 miles would be the correct distance that any of them would haul going to Greenwich?

A. I would estimate that would more than cover it.

Mr. Titus:

Q. You are not going to tell anyone to change?

A. Did you ever try to tell a farmer to change?

Q. It is going to be optional with them where they deliver?

A. Correct.

Q. Now, if Hood did not anticipate that it would be a substantial saving to a number of their present producers, it would be folly for them to undertake this proceeding. Isn't that right?

A. Correct.

Mr. French:

Q. What is the greatest distance you are hauling to Eagle Bridge at the present time.

A. I would say 30 miles.

Q. How about Salem?

A. Well, it is barely possible that the White route is about 25 or 26 miles.

Q. You have not actually gone out and canvassed the farmers, telling them that you might have a plant at Greenwich, and asking them if they would ship there if you had a plant there? I mean new producers.

A. No, we have not gone out with that in mind. We have talked to the producers, saying that we might purchase the Greenwich plant so they could deliver there.

[fol. 60] Q. Your present producers?

A. Yes, and maybe some of the others. I would not say.

Q. Mr. Whiting testified there would be 150 cans of addi-

tional milk that might come in to the Greenwich plant locally in addition to the 300 cans you would take from Salem and Eagle Bridge. There has been no canvassing to assure that amount of milk. Is that right?

A. Not as yet.

Mr. Titus:

Q. But you will open a new plant if permission is granted, whether you get new producers or not?

A. Correct.

Mr. French:

Q. You feel that 300 cans is enough to warrant the opening of a new plant?

A. Yes, sir.

Mr. French: That is all at this time.

The Chair:

Q. Mr. Gould, can you tell us the actual dollar and cents price now being paid by Eagle Bridge and by Salem?

A. I think we paid \$3.66½ at Eagle Bridge for January, and Salem was \$3.65. That is for 3.7 per cent milk—up and down 8 cents on a point.

Q. Do you know approximately the butterfat content there?

A. The month of January around 3.9 at Eagle Bridge, and possibly 3.8 at Salem.

Q. Then, I think this would be an appropriate place to ask this question. What zone, if you know, would the Greenwich plant be in from Boston?

A. Eagle Bridge is in the 17th zone and Salem is in the [fol. 61] 19th. I should say that Greenwich would land either in the 19th or 20th zone. I will not say which.

Q. At this point, I wonder if you would have any objection if the Commissioner would take judicial notice of the provisions of the Federal Order No. 4 relative to price, transportation, zones, etc.?

Mr. Titus: I have no objection. I never heard of it until today.

Mr. Mather: I suppose that is also applicable to the provisions of Federal Order No. 27?

Mr. Titus: No objection.



The Chair: It is understood that the Commissioner may take judicial notice of Federal Orders Nos. 4 and 27, and I assume State Official Order No. 126.

Are there any other questions?

Mr. Rohlf:

Q. How far distant is it from the proposed plant at Greenwich to Salem—road distance?

A. About 10 miles.

Q. How far is the distance from Greenwich to Eagle Bridge?

A. About 12 miles.

Q. And you are going to pull some of the farmers in between those plants? In other words, 10 and 12 miles? Would you say 5 to 6 miles would be the dividing line?

A. In some cases it would depend upon where other plants are located.

Q. A good share of your farmers would save a distance of 5 or 6 miles on their hauling?

A. That is right.

Q. This 80 to 100 producers that you expect to change [fol. 62] from Salem and Eagle Bridge, where is the biggest bulk of them located?

A. About 200 cans are located right around Greenwich.

Q. You mentioned Argyle.

A. We have some in Argyle.

Q. How far is Argyle from Greenwich?

A. I would say 12 to 14 miles.

Q. How far is Saratoga?

A. The northern section of the country is just about practically the same.

Q. 14 miles?

A. Yes.

Q. What plant do they go to now?

A. The Argyle route goes both ways. One route goes to Salem and one to Eagle Bridge.

Q. How far is Argyle from Salem?

A. Well, I couldn't say exactly. I would say it is around 16 miles.

Q. How far is Argyle from Eagle Bridge.

A. About 20 miles.

Q. There is not too much saving in miles. You are going to save 5 or 6 miles—not much more than that. Am I correct in that assumption?

A. Some of them would save that.

Q. I am talking of the biggest bulk of the farmers. They would only save about 5 or 6 miles. Is that correct?

A. Well, the Saratoga stuff and the Argyle stuff would have 12 miles. They would save 12 miles.

Q. I understood from the figures that you gave me that the biggest bulk of them would save 5 or 6 miles on their haulage?

A. That is right.

Q. This 80 or 100 producers that you expect to take from the other two plants; about how many cans will they deliver a day?

A. Around 300.

[fol. 63] Q. In the flush season, how much will they deliver?

A. Probably 500.

Q. So these farmers that you take will run from 300 to 500 per day?

A. That is right.

Q. Your 80 to 100 producers?

A. That is right.

Mr. Mather:

Q. When your Eagle Bridge plant is completed, how much will the capacity be in comparison with its capacity last year?

A. I have not had anything to do with that. I have been busy in the country.

The Chair: I think that is on the record.

Q. Mr. Whiting, what is the increase in capacity at Eagle Bridge after the remodelling?

A. Before remodelling, the capacity was 35,000 pounds an hour.

Mr. Lalor (cont'g with Mr. Gould):

Q. Mr. Gould, I believe that Mr. Whiting testified that all hauling arrangements were arrangements made directly between the producers and independent haulers. Is that correct?

A. Correct.

Q. Could you tell me if the Hood Company ever paid any producers the hauling charge?

A. No. We do not do that. We used to years ago; but not in the last 10 or 15 years.

Mr. Lamont:

Q. Mr. Gould, what can you say as to the size of some of the larger loads that are moving into the Eagle Bridge [fol. 64] plant? What is the capacity in terms of cans of those loads during the flush season?

A. Around 100 cans.

Q. How many trucks are there that would bring in in the flush season in excess of 60 cans? Can you tell us?

A. I could not without figuring it out. I imagine we have about 10 routes that run above that.

Q. Now, if you build the proposed plant for which you are seeking the license here, how many men will it be necessary to employ at that plant to operate it according to the Boston Board of Health specified regulations?

A. I think around 3 or 4.

Q. That would include the manager?

A. Yes.

Q. What can you say as to the condition of the highway between Greenwich and Eagle Bridge?

A. Excellent.

Mr. Lamont: That is all.

Mr. Steffen:

Q. You have regulations in Boston relative to premises inspection of new dairies and your present dairies. I mean you have regulations.

A. Yes.

Q. When you make the inspections we assume that they are supposed to comply with them. Isn't that so?

A. When I make them?

Q. You or another inspector. When you inspect a dairy to ship milk to the Boston market, you are expected to come up to the measures prescribed by the Boston Health Department?

A. That is right.

Q. You do not require a veterinarian examination of the herds?

A. No.

Q. You do not have to keep any veterinarian certificates on file?

A. No, sir.

[fol. 65] Q. You just take on the dairy without any physical examination?

A. That is correct.

Q. Isn't it a fact that during the past year when the Boston City Health Department Inspector came you accompanied him to some of the dairies?

A. I accompany them to all of the dairies.

Q. Isn't it a fact that when you took on new dairies, if they didn't comply that they were told that if they were to make the compliance within 3 or 4 months that they could ship right off?

A. That is up to the inspector.

Q. I mean he did take milk on under those circumstances.

Mr. Titus: I object to that as immaterial to this proceeding, and it is questioning of something not within the personal knowledge of this man.

Mr. French: I will join in the objection.

The Chair: Objection sustained.

Mr. Lamont:

Q. Mr. Gould, is it not true that during the period which you described from 1900 down to date, milk has been produced in the vicinity of Greenwich, Salem and Eagle Bridge for the New York Metropolitan Milk Marketing Area?

A. To some extent. New York has been in Cambridge during that time. Saratoga and Greenwich, no. In the old days Whiting and Hood bucked each other all the way from Eagle Bridge through to Mechanicville, and the eastern milk went one way or the other.

Q. There is a New York approved plant at Buskirk?

A. Yes.

[fol. 66] Q. There is a New York approved plant at Ft. Edward, is there not? One owned by the Dairymen's League and one operated by the Middletown Milk & Cream Company?

A. Yes.

Q. Isn't there a plant at Saratoga Springs?

A. Correct. I do not know whether it is approved or

not. It was at one time, but I understood last year the New York Board of Health did not approve.

Q. You mean it may be approved for some other fluid market.

A. It may be.

Q. Isn't there a New York approved plant at Manchester, Vermont?

A. Yes.

Q. And at Granville, N. Y.?

A. There is.

Q. And at West Pawlet, Vermont?

A. There is.

Q. So that the New York and Boston milk sheds overlap each other in this general vicinity, do they not?

A. They do.

Q. Are there some producers in the vicinity of Buskirk, Eagle Bridge and Greenwich who deliver to the Capitol District Market.

A. There is.

Q. Is it not the general practice for a milk plant under present conditions of improved highways and motor transportation to serve a tributary area up to a 30-mile radius?

Mr. Titus: I object to that unless it is limited. I do not think this witness should be called upon to testify for all the other plants in the state. I have no objection to what the practices are at the plants.

Q. With respect to the practices at the plants operated by your employer, H. P. Hood, in this vicinity, is it not a [fol. 67] fact that these plants serve a tributary area having a radius up to 30 miles?

A. They do.

Mr. Lamont: That is all.

Mr. Mather:

Q. How far is it from Greenwich to Fort Edward?

A. I could not say exactly.

The Chair: At this point I am wondering if there would be any objection on anyone's part to the Commissioner taking judicial notice of all these distances between locations.

Mr. Titus: I would join in that. You mean independent—not on testimony here?

The Chair: Both.



Mr. Titus: I would like to ask some questions. Maybe I am wrong.

The Chair: Would it be agreeable if the Commissioner takes judicial notice of the actual road distances between the various localities mentioned?

Mr. Titus: No objection on my part.

The Chair: Is there any objection to the Commissioner taking judicial notice of distances of various milk plants in the vicinity of the proposed plant at Greenwich—at least within New York State?

Mr. Lamont: I believe we do have to go farther than 20 miles, because the consolidation of milk supplies for the purpose of efficient handling for the Capitol District can only be accomplished by the elimination of country plants [fol. 68] and the direct delivery by farmers of their milk to the plant at which it is to be bottled.

So far as Boston is concerned or New York, they are so far away that it is necessary to first deliver at a country plant, but so far as Albany, Schenectady, and Troy are concerned, if this is only a matter of driving in 10 or 15 miles with a motor truck on a concrete highway, economics dictate that that milk be hauled that distance to obviate the necessity of a separate country plant handling charge.

Mr. Titus:

Q. What is the longest distance away from Greenwich that you contemplate pulling milk?

A. I think 15 miles would be as far with existing plants.

The Chair: Unless there is objection, the Commissioner will take judicial notice of the milk plants which might possibly be affected by the operation of this proposed new plant.

Mr. Titus: No objection.

The Chair: Are there any other questions of this witness?

Mr. Titus: The statement of Mr. Lamont—that was purely a statement.

The Chair: It is purely a statement of counsel.

Mr. Titus: The petitioner rests.

The Chair: Now, those appearing in opposition.

Mr. Lamont: I will call Mr. Pratt.

[fol. 69] JACOB F. PRATT, being duly sworn, testified as follows:

By Mr. Lamont:

Q. What is your full name?

A. Jacob F. Pratt.

Q. Where do you reside?

A. Schaghticoke, N.Y.

Q. What is your occupation?

A. Farmer.

Q. Are you a member of a Dairy Farmers Co-operative Association that markets your milk?

A. Yes.

Q. What association is that?

A. Dairymen's League.

Q. For how many years have you been a member of that association?

A. About 18 years.

Q. For how many years have you been producing milk?

A. Well, I have produced milk more or less all my life, except for 8 years when I was off the farm, 1919 and 1927—from 1927 until now.

Q. To what market is your milk delivered?

A. My milk now is delivered to Troy. Formerly it was delivered to one of those Whiting plants that Mr. Gould spoke about.

Q. Are you an officer of any other farmer organization representing farmers in this territory?

A. I am a director of the New York State Farm Bureau Federation.

Q. Do you have any office in the Dairymen's League Co-operative Association?

A. Subdistrict president.

Q. For what geographical area?

A. For the counties of Washington, Rensselaer and Saratoga, and Rutland and Addison, Western Vermont, or all Vermont where we have plants.

[fol. 70] Q. Are you familiar with the organization of a milk supply for the City of Troy in so far as it is derived from Washington County, more particularly the vicinity of the Villages of Greenwich and Eagle Bridge?

A. Yes, I am fairly familiar.

Q. Does the City of Troy derive substantial quantities of milk from that territory?

Mr. Titus: I object to that question. It is too general. Also it is not shown to be within the knowledge of the witness.

Q. As one of the officers of the Dairymen's League, were you a member of any committee studying market conditions from month to month in the Troy and Capitol District markets?

A. I am a member of the Marketing Area Committee, that is, a Dairymen's League Committee representing producers.

Q. In connection with that work and in connection with your membership work, are you familiar with the location of the dairy farms in Washington County which are scored for the Troy market and deliver to that market?

A. I am.

Q. Are you likewise familiar with the organization of trucking routes by which that milk is delivered to plants in Troy?

A. Yes.

Q. And you have some idea or knowledge of the number of dairies in the southern portion of Washington County, and the northern portion of Rensselaer County, and in the vicinity of 12 miles north of that boundary and 5 miles south of that county boundary as to how many producers ship to the Troy area?

A. Yes. In that particular area?

Q. Yes.

[fol. 71] Mr. Titus: I object unless it is shown on what he is basing his estimate or figures here.

The Chair: He says he knows.

A. We have in that area, I think, approximately 150 Dairymen's League producers. I think there are in that area also approximately 150 at least other producers delivering to that area. Those are approximate figures.

Q. And all of those you say are approved for the Capitol District markets?

A. Right.

Q. Do you have a statement that you want to make at this time in connection with this application?

A. Yes.

I have lived in these counties and, as has been brought out, ship milk to the Troy area. For the last 12 years I have been fairly closely identified I believe with the milk market. I do remember back to the time when the Whiting plants were closed. We formerly shipped milk to the Whiting plants in Boston and it was because the demand, or one factor at least—the demand for direct delivery milk in the Capitol District areas as it increased was one of the factors in crowding Whiting back toward Boston. Another factor coming into the area was Gold Medal and Dellwood coming in there and buying milk and offering a more attractive market for the milk.

Mr. Titus: I must object to all statements of this witness for what was evidently so and apparently so, and as to these conjectural factors, and I move to strike them from the record. I mean statements like the witness just made, that [fol. 72] they apparently had to do thus and so. Unless the statements were made within the knowledge of the witness I must object.

Q. Did the Dairymen's League at one time acquire a plant and operate a plant at Greenwich, N. Y.?

A. Yes.

Q. Did the Dairymen's League conclude to close that plant some time thereafter?

A. They did.

Q. And when that plant was closed where was the milk thereafter delivered?

Mr. Titus: I object to that as too general.

Mr. Lamont: I submit it is not too general and I insist that it be answered; and I state this as the reason.

The producers are investing substantial sums of money in an effort to consolidate farms and plants in this territory and in the interest also of making milk available on direct delivery to the city markets in this area.

The Chair: You are assuming that the objection was to the general line of questioning. Is that right?

Mr. Lamont: Yes.

Mr. Titus: The question was what did they do with the milk after the plant closed. Where did the producers deliver the milk. I assume there were more than one or two producers, and I object to this witness testifying for every

producer who delivered milk to that Dairymen's League plant as not based within his knowledge.

[fol. 73] Mr. Lamont: I will withdraw the question.

Mr. Lamont (cont'g):

Q. Do you know of any producer who delivered to the plant at Greenwich who after it was closed, immediately thereafter, delivered to Troy?

A. Yes.

Q. Do you know of some in that vicinity who immediately thereafter delivered to Fort Edward?

A. No, I do not.

Q. Or some other New York approved plant.

A. There were some who delivered to that plant who delivered to the Dairymen's League plant at Cambridge, which was running then.

Q. Did there come a time when the Dairymen's League closed the plant at Cambridge?

A. Yes.

Q. Do you know of some producers who were then delivering to Cambridge who immediately thereafter delivered to Troy?

A. All of the producers then delivering at Cambridge were diverted to Troy with the possible exception of one or two, who left the Dairymen's League and went to other markets.

Q. Do you know of your own knowledge whether at the time that the Dairymen's League disposed of its plant at Greenwich whether or not it acquired a restricted covenant against the operation of that milk plant thereafter?

Mr. Titus: I object to that.

A. I know that it did.

Mr. Titus: It is in no way binding upon the applicant here and has nothing to do with this proceeding.

[fol. 74] The Chair: I do not see as it is binding upon this applicant.

I sustain the objection.

Mr. Lamont: Well, the producers in the interest of consolidating the milk supply for this territory, made a pecuniary sacrifice in discontinuing the operation of that plant and closing it as a milk plant, and, having made a sacrifice of that sort in the interest of consolidation of farms, it



is certainly a reactionary move to step into this same territory and re-establish a milk plant within this area.

The Chair: It may be true that the Dairymen's League made such an agreement, but it is certainly not binding upon this applicant or the Commissioner.

Mr. Lamont: None whatsoever.

The Chair: I sustain the objection.

Q. Can you describe the number of truck routes which run out of Troy into this vicinity?

A. The number of truck routes that run out of Troy?

Q. How many trucks are there which draw milk into Troy over Route No. 40 in the vicinity of Greenwich for the Dairymen's League producers?

A. For the Dairymen's League producers there are two on Route No. 40. I think a third one covers part of that route on its way into Troy. I know it.

Q. Are there truck routes which haul milk for the Dairymen's League producers from the vicinity of Eagle Bridge into Troy?

A. Yes.

Q. And over what route would that be and how many [fol. 75] trucks?

A. There are 3 that I know of. There may be more, but there are 3.

Q. Do other handlers in the Troy market to your own knowledge procure supplies of milk from that same general territory?

A. Yes.

Q. Is there milk of Dairymen's League producers in the vicinity of Greenwich and within a radius of 10 miles of Greenwich being delivered to a Dairymen's League plant at Fort Edward?

A. Yes.

Q. Have you any idea how many dairies within a radius of 10 miles of Greenwich would be delivering to Fort Edward?

A. I do not know offhand.

Q. Do you have any knowledge as to the adequacy or inadequacy of the milk supply for the City of Troy during the last short season—from October through June?

Mr. Titus: That calls for a yes or no answer.

Q. Do you have any knowledge with respect to the adequacy or inadequacy of the supply for the market?

A. Yes.

Q. Was the supply adequate or inadequate?

A. Inadequate.

Mr. Titus: I move to strike that out as a conclusion. No foundation has been laid for the statement or how he acquired the information.

The Chair: We will permit the answer to stay on the record with the understanding that he substantiate it.

Q. Does your Market Area Committee obtain information from time to time from the Dairymen's League Division [fol. 76] office in this market as to the relationship of available truck delivery supplies to current demands for the fluid market here?

A. Yes.

Q. Did you get such information and specific figures for the short period—November through January?

A. Yes. This has been discussed at our committee meetings regularly.

Q. Did there come a time this fall when the figures placed before your Capitol District Marketing Area Committee disclosed that truck delivery supplies were less than the fluid milk and cream demands?

A. Yes.

Q. What did the Marketing Area Committee direct be done to make supplies of milk available for the Capitol District Market?

Mr. Titus: I object to that as immaterial—what his committee did to make milk available.

Mr. Lamont: I submit it is pertinent.

The Chair: Only as it affects the proposed operation of this applicant.

Mr. Titus: What they directed to be done is objectionable. With all due consideration, what they directed may have been the worst thing to do.

The Chair: I sustain the objection.

Mr. Lamont: I would like to be heard.

The Court: What they directed be done is objectionable. What did they do—and even then just as to how it affects the proposed plant.

Q. What did you do to make supplies available?

A. The Dairymen's League is bringing in, and has been, right up to now, an average of 250 cans of milk a day from

[fol. 77] country plants—Fort Edward and Greenwich. We are also bringing 80 cans a day out of Fort Edward to Glens Falls, which is a direct delivery market. Some of those producers are right in the Greenwich area where this proposed plant is proposed to be built. It is common knowledge also that other plant milk was brought in here to supply the market besides what the Dairymen's League brought in.

Q. Is the immediate vicinity of Greenwich also within the so-called direct delivery area of the City of Glens Falls?

A. Yes.

Q. Do you know of producers who live within a 10-mile radius of Greenwich who actually deliver their milk direct delivery into the City of Glens Falls?

A. Yes.

Q. In order to procure milk for the Capitol District, what is the applicable ceiling price, if you know, which a dealer is permitted to pay to producers?

A. The ceiling price in the Capitol District Area for Class I milk is the New York blend plus the Albany freight rate plus 5 cents. The Albany rate I think is  $3\frac{1}{2}$  cents, so the actual blend plus  $8\frac{1}{2}$  cents is the ceiling price for Class I milk.

Q. Do producers delivering to New York approved plants in Columbia County receive a so-called locational differential?

A. Yes.

Q. In addition to the New York Market Administrator's uniform announced price for that area?

A. Yes.

Q. What effect does that have as to the availability of supplies for the Capitol District Market from that direction?

[fol. 78] Mr. Titus: I object to that as calling for a conclusion of the witness and being clearly within the province of the Commissioner to determine.

Mr. Lamont: It is his experience in studying market conditions and supplies for the Capitol District Market. I think it is pertinent. Obviously if they cannot get the milk from immediately south of the market, the market has got to go in a northerly direction to get adequate supplies.

The Chair: Does the witness know that that has been the case?

Q. Do you know that the competitive factor has affected the availability of supplies?

A. Yes, I do. I know that the Dairymen's League has just lost 2 producers to go to that market. The south end of Rensselaer County has a lot of milk that goes down in Columbia County. I know a number of those dairies that transferred from this market and go to Columbia County, so we are limited on the south.

Q. Prior to the establishment of O.P.A. ceilings and for a number of years, did the Dairymen's League pay a direct delivery differential to cover part of a long distance hauling cost into upstate markets, including the Capitol District Market?

A. Yes, they did.

Q. What was that amount?

A. It varied in different years. Immediately before O.P.A. came in, it was a fifteen cents differential on all milk. Before that it was a thirty cents differential, but that included a production program along with it.

[fol. 79] Q. Is it possible now to pay a direct delivery differential under O.P.A. ceilings?

Mr. Titus: I object to that as immaterial.

The Chair: I do not see as it is material.

Mr. Titus: That is a general condition, I assume. I do not know.

The Chair: You would be willing to agree that is not possible—that they cannot pay it?

Mr. Titus: I assume they cannot—that the O.P.A. will not let them.

A. And the returns of the market will not let them either with the ceiling.

Q. So that handlers in the Capitol District Market and handlers in the New York Market under O.P.A. ceilings are in a better position to compete for supplies near by the Capitol Market by reason of the temporary, we hope, ceiling price applicable to producer returns in this area for direct delivery milk?

Mr. Titus: I object to the form of the question as calling for a conclusion by the witness as to whether any one is in a better position than any one else.

The Chair: I think there are facts enough on the record so that the Commissioner can draw a conclusion, and I sustain the objection.

Mr. Lamont: That is all.

The Chair: Any questions, Mr. French?

Mr. French: I will reserve the right to question pending questions by Mr. Titus.

[fol. 80] By Mr. Titus:

Q. You have trucks that draw directly from the Eagle Bridge Farm Area?

A. We have. I am a little at sea as to what you term "Eagle Bridge Farm Area." Those trucks extend all over.

Q. You testified as to the Greenwich Area. Do you have producers in the Greenwich Area?

A. Right.

Q. You have them also in Salem?

A. Right.

Q. To what extent? Within a radius of how many miles of Salem?

A. What do you mean—does the farm area extend?

Q. Yes.

A. Mr. Gould, I believe, testified 25 miles.

Q. You agree with him?

A. Yes, I agree with him.

Mr. Titus: That is all.

Mr. French: I have no questions.

The Chair: Has any one else any questions?

(No response.)

The Chair: Mr. Rohlf, do you want to present your witness?

Mr. Rohlf: I will call Dr. Tompkins.

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DR. TOMPKINS, being duly sworn, testified as follows:

Mr. Rohlf:

Q. Give your name and address?

A. Andrew J. Tompkins, Middletown, N. Y.

Q. You are in the employ of Sheffield Farms?

A. I am.

[fol. 81] Q. In what capacity?

A. District Superintendent.

Q. Does the district of which you have charge take in the plant at Cambridge, N. Y.?



A. It does.

Q. How far is Cambridge from Greenwich?

A. Possibly 10 or 12 miles.

Q. At the plant at Cambridge you take milk from how many farmers living in the vicinity of Greenwich?

A. About 20.

Q. About how many cans of milk a day is that?

A. Approximately 80.

Q. At the present time how many cans of milk are you taking?

A. 350.

Q. What is the capacity of the plant?

A. 600.

Q. In your opinion, there is plenty of capacity to take more farmers at the present time?

A. That is right.

Q. How long has the plant been at Cambridge?

A. I would say approximately 30 years.

M. Rohlf: No further questions.

Mr. Titus:

Q. Counsel asked you how many cans you got from the Greenwich vicinity. Does that include Eagle Bridge and Salem?

A. It does not. Greenwich vicinity would be, I believe, east of Greenwich and adjacent to there.

Q. How many miles radius?

A. I would say that we are getting this milk from 6 or 8 miles—6 miles.

Mr. French: No questions.

Mr. Rohlf: I would like to make a statement. First, as [fol. 82] Mr. Tompkins has testified, our plant is running well under capacity. We could take more farmers ourselves. The farmers in that vicinity are adequately served. If another plant is located in Greenwich, it looks like it will be destructive competition and certainly will not aid market conditions. The farmers have an adequate number of plants to receive their milk, and I think another plant will cause unstable conditions in the market. That is our reason for opposing the application.

Mr. Mather: I will call Mr. Wedeen, vice president, Middletown Milk & Cream Company.

MR. N. WEDEEN, being duly sworn, testified as follows:

By Mr. Mather:

Q. In what capacity are you employed?

A. Executive, vice president.

Q. You are in charge of country plants?

A. I am.

Q. Does the Middletown Milk & Cream Company operate a plant at Fort Edward?

A. Yes.

Q. That is how far from Greenwich?

A. Approximately 12 miles.

Q. Do you have routes running out of the Fort Edward plant down towards Greenwich?

A. Yes, we do.

Q. Approximately how many routes?

A. About 3.

Q. Have you prepared a table or chart showing the number of producers delivering milk to Fort Edward, N. Y., plant for January, 1941, to March, 1946, together with average daily milk receipts showing the high and the low for the years 1941 through 1945?

A. That is right.

Q. That was prepared under your direction and supervision?

A. Yes.

Q. From the books and records of the Middletown Milk & Cream Company's plant at Fort Edward?

A. Yes.

Mr. Mather: I would like to offer that in evidence and ask the witness to comment on it.

Mr. Titus: I object to the admission of this in evidence on the ground that there is nothing on these charts to show where the milk comes from.

Q. Where is the milk delivered to?

A. The milk is delivered to the Fort Edward plant.

Q. Routes running out of the Fort Edward plant?

A. That is right.

Q. Three of which I believe go down towards Greenwich?

A. That is right.

Mr. Titus: I still object on the ground that there is noth-

ing to show on the charts what comes from Greenwich and what comes from some other area.

Mr. Mather: It is being offered to show that the capacity of the Fort Edward plant has by no means been reached and that the area in question is adequately served.

The Chair: Do you still object?

Mr. Titus: Yes. I assume in the light of counsel's last [fol. 84] offer that it will be received, if received at all, only to show as to the question of the capacity of the plant.

Mr. Mather: And that the area is adequately served within the meaning of the statute.

The Chair: I am going to overrule the objection and receive the tabulation and chart in evidence as to the number of producers and what information there is as to the volume of milk delivered at the Fort Edward plant from all sources.

Mr. Titus: May I have an exception?

The Chair: The tabulation will be marked Exhibit No. 6-A and the chart Exhibit No. 6-B.

Q. What was the number of producers delivering to the plant in January, 1941, as shown by the chart?

A. 295.

Q. What was the number delivering in March, 1946?

A. 214.

Q. Last year what was the low intake?

A. 1945 was in November—44,960 pounds.

Q. And the highest?

A. The highest intake was in 1942—June, 91,499 pounds.

Q. And in 1934, how many producers were delivering to the Fort Edward plant?

A. In August, 1934, we had 593 producers.

Q. What did they deliver at the high point?

A. At the high point of June they delivered 160,455 pounds.

Q. So that at the low point in 1945 you were taking in almost exactly one-half of what you took in at the peak period?

A. That is right.

Q. And you are equipped to handle as much as 160,000 pounds a day if you could get it?

[fol. 85] A. We could handle that and I think a little bit more.

Mr. Titus:

Q. Not all of this milk comes from the Greenwich area, does it?

A. No.

Mr. Mather:

Q. How many routes run out of the Fort Edward plant?

A. Twelve. I am not sure.

Q. And about the same number of producers on each route, or do they vary?

A. Well, they vary.

Mr. French: No questions.

Mr. Titus:

Q. How far did you say that your plant is from Greenwich?

A. Approximately 12 miles.

Q. In what direction?

A. North of Greenwich.

The Chair: Anything else?

(No response.)

Mr. Mather: I will call Mr. Burke.

JOHN W. BURKE, being duly sworn, testified as follows:

Mr. Mather:

Q. What is your full name?

A. John W. Burke.

Q. Where do you live?

A. Middlebury, Vt.

Q. You are employed by the Vermont Milk & Cream Company?

A. Yes, sir.

[fol. 86] Q. In what capacity.

A. General manager of country dairies.

Q. Is the Vermont Milk & Cream Company dairy plant at West Pawlet, Vt.?

A. Yes.

Q. How far is that from Greenwich?

A. In the neighborhood of 18 or 20 miles.

Q. How many producers are delivering to the West Pawlet plant?

A. 145.

Q. What did that plant take in at the high point last year?

A. Right around 900 cans.

Q. And at the low point?

A. About 450.

Q. What is the plant capacity?

A. 1,200 cans.

Q. Do any of the producers living in the vicinity of Greenwich deliver to the West Pawlet plant?

A. Not within 12 or 14 miles.

Mr. Titus: Then I move to strike out all of the previous answers of this witness, inasmuch as there are no producers within 12 or 15 miles of Greenwich.

The Chair: Supposing we leave the testimony of the witness in and the Commissioner will use his discretion whether or not he may wish to use it.

Mr. Mather: That is all.

Mr. Titus:

Q. Where do the most of your producers come from, Mr. Burke?

A. Rupert, Vt., and Granville, N. Y.

Q. Granville is close to the Vermont line?

A. Yes, and Middle Granville, and we have milk coming from the Smith Basin shed.

Q. The bulk of your milk comes from Vermont?

A. No—from New York State—around Granville.

[fol. 87] Q. There are no producers within 12 or 15 miles?

A. That is as near as I understand.

Mr. French: No questions.

The Chair: Mr. Buhrmaster, have you something to say?

A. E. Buhrmaster, Scotia, N. Y., President of the Schenectady Dairy Council and appearing for them.

I am appearing here objecting to the granting of this petition on the grounds that the number of miles between our marketing area and Greenwich are such that our supply, or a great deal of it, at Schenectady comes from the northern country. Our supply during the latter part of the year



1945 was inadequate. In our particular case only 90 per cent of the milk was delivered. In other cases it was considerably less than that. Our cream sales were out for two months. Our situation was relieved somewhat by milk that we understood come from north of us.

Mr. Titus: I move to strike out what he understood came from the north as not being within his own knowledge.

A. I am going to say that some of it came from the north of my own knowledge.

Mr. Titus:

Q. How far are you from Greenwich by road or highway?

A. Well, if any one knows how far it is from Saratoga to Greenwich. I would say around 30 or 35 miles.

[fol. 88] Q. And the conditions to which you just testified about cream being out and so on were pretty general throughout all the cities of the east?

A. Yes.

James M. Strang, Esq., of Counsel for John P. Weatherwax, Esq., Troy N. Y.

I will call Edward McClellan.

EDWARD McCLELLAN, Salem, N. Y., being duly sworn, testified as follows:

By Mr. Strang:

Q. Where are you employed?

A. Washington and Rensselaer County Co-operative Association, Cambridge, N. Y.

Q. In what capacity are you employed there?

A. I am field and plant representative for the co-operative.

Q. Do you wish to make a statement in opposition to the granting of a license for the operation of a plant at Greenwich, N. Y.?

A. I do, representing the co-operative.

The Washington and Rensselaer Counties Co-operative which is located at Cambridge and producer members are delivering milk to Gold Medal Farms at Buskirk, N. Y. The plant to which they are delivering has ample facilities for handling all present and anticipated milk increase and the area is adequately served by ample trucking facilities.

In making a recent survey as far as possible from our office, we found that approximately 100 producers of the association [fol. 89] are located in the Greenwich area, or within a radius of 10 miles, and if a plant were to be located in Greenwich, it would perhaps be in the center of our locality and would tend to take away some of those producers and shorten the milk supply to local markets and also to the Metropolitan area, and with perhaps less dairy or health regulations in the Boston market, they being less rigid than the New York market, might also tend to take some producers.

With the present plant facilities and the location of the Buskirk plant, the association opposes the issuance of an extended license for this area.

Mr. Titus:

Q. You say that the New York regulations are more rigid. Do you know what the minimum temperature for the morning milk is for New York?

A. 60 degrees.

Q. Do you know for Boston?

A. I believe 50 degrees.

Q. That would be the other way around in that instance?

A. On other measures which I am familiar with from the farmers' standpoint I know they are more rigid, and from the veterinarian's standpoint and from the condition of market equipment and farm regulations regarding milk houses and other conditions of the premises inspection,

Q. Who do you represent—the Washington and Rensselaer Counties Producer Co-operative?

A. That is right.

Q. Do all the producers of that co-operative deliver to one plant?

A. Yes, that is true.

Q. What plant is that?

A. Gold Medal Farms, Buskirk.

[fol. 90] Q. Who owns Gold Medal Farms? Your producers do not own it?

A. No. The association contracts the producers to Gold Medal Farms.

Q. You are speaking for your producers and not for Gold Medal Farms?

A. That is right.

Q. Your producer association might benefit by this plant, might it not?

A. Not under our particular New York setup with our association, no.

Q. In other words, you have a contract with Gold Medal Farms. Is that what you mean?

A. No, but I mean from the co-operative angle, I am speaking from. We would not be able to maintain our revenue by splitting up our co-operative.

Q. In other words, you want to deliver as a body, and not have so many delivering to Greenwich and some to Gold Medal Farms?

A. That is true.

Q. Even though it might benefit the producers near Greenwich to deliver to Greenwich instead of to Gold Medal Farms?

A. We are looking out for the producers—for the benefits to them, and we can see no benefit because the plant where we are already delivering is so geographically situated for trucking.

Q. There might be some of your producers to whom it might be much more convenient to deliver to Greenwich?

A. That is right.

Mr. Titus: That is all.

Mr. French: No questions.

Mr. Strang: I will call Mr. Steffen.

[fol. 91] PAUL STEFFEN, JR., being duly sworn, testified as follows:

Mr. Strang:

Q. You are employed by whom?

A. Gold Medal Farms, Inc.

Q. They have a plant at Buskirk, N. Y.?

A. They do.

Q. Is your work in connection with the plant at Buskirk?

A. I am plant manager.

Q. Do you wish to make a statement at this time regarding the extension of the operations of a plant at Greenwich?

A. I do.

This plant at Buskirk is a manufacturing plant, and we

can handle up to 3,000 can of milk a day. We employ in excess of 20 men and up to 30 men during the flush in the processing and handling of milk delivered to Buskirk. During the recent shortage we manufactured practically no milk at Buskirk, but we maintained our pay roll anticipating the flush period, when we could handle the surplus or the increased volume. If the volume of the plant is reduced, it would not pay us to maintain it as a manufacturing plant.

The location of the proposed Hood plant at Greenwich, N. Y., is a territory where we receive milk from approximately 100 producers delivering approximately 400 cans of milk daily to Buskirk. We have nine trucks delivering milk in and around that particular area to Buskirk.

Approximately ten years ago the Whiting Company of Boston maintained plants at Johnsonville, South Cambridge, Archdale and Greenwich. In the interest of the consolidation of plants, these plants have since closed.

[fol. 92] Mr. Titus: I move to strike out the last statement as not being within the knowledge of the witness—the reason for closing. I do not mind the fact that they closed.

The Chair: The reason as to why the plants were closed may be stricken from the record.

Mr. Steffen (continuing): It is a fact that while it might save a slight trucking expense to some producers who might go to the proposed plant, it would demoralize the trucking facilities that now deliver to the Buskirk plant.

There is a New York City Health Department regulation which prohibits what we call uninspected milk to be on the same truck with inspected milk. By inspected milk we mean that inspected for New York City consumption. But uninspected milk—milk for any other market—our Health Department doesn't permit us to have that milk delivered on the same truck. In other words, if a truckman had milk for delivery to a Hood plant. The truckman would lose part of his load and in most probability would discontinue the hauling of milk due to the lesser revenue. It would not pay him to run it.

The bacteria requirements for the Boston market, according to their statement here, is 400,000 per cubic centimeter. We are limited by the New York Health Department to 150,000 microscopic.

We are also required to have each of our producers submit a veterinarian's certificate showing the physical in-

spection of the herds, which necessitates a return by the veterinarian where he finds a condition that requires the [fol. 93] treatment of the cows. This is a considerable expense over a course of a year to the producers where the veterinarian has the right to condemn a cow for various reasons, after which we are not permitted to accept milk from that particular producer.

We are permitted to pay no premiums for grades of milk on the New York market. The Boston market permits premiums for grades up to 40 cents per hundred on the basis of the bacteria count regardless of the fat content. This would create a demoralizing competitive situation in our area.

The Health Department have now issued a regulation which will increase the minimum size of a milk house as required on each producer's premises. That of a producer with 1 to 12 cows, 60 square feet, inside measurement floor area to 120 feet, inside measurement floor area. We have been instructed to go to each producer who does not qualify and get the producer's signature to the effect that he will have constructed a new milk house by the fall of 1946. We, in turn, must sign an agreement for the responsibility to see that the milk house is built, and if it isn't built by that time, we are to exclude the dairy from shipping to any New York-approved plant.

As a requirement concerning New York dealer operations. There are some very large cattle dealers who produce large quantities of milk, and we are under restrictions in connection with these operators—

The Chair: I judge that what you are trying to do is set [fol. 94] forth some of the requirements of the New York City Health Department. Is that it?

Mr. Steffen: Exactly.

The Chair: It seems to me if we are going to make comparisons between requirements of the Boston Health Department and the New York City Health Department that that would be a study in itself, and it does not occur to me—while I am not ruling it out now—that the Commissioner can go into that in very great detail.

Mr. Steffen: The purpose is to show that we have got to live up to these requirements and they are not required in Boston. I know from past experience that we are going to



lose a lot of milk to the Boston market. We have had to live up to regulations and they have not.

The Chair: Can we not state here that if the Commissioner feels that is an essential part of the facts to be considered that he can obtain the Health Department regulations and take judicial notice of them.

Mr. Titus: I hate to enter into any such stipulation as that. I do not see as it has any bearing on this proceeding. Where testimony is given by statement, it is very difficult for anyone on the other side to object to it. If I were to object to all the objections in that statement which I consider objectionable, it would take a long time, and so, for the purpose of the record, I would like to move to strike out [fol. 95] any testimony given by Mr. Steffen based on records which he has apparently been consulting, statements which are not in evidence, setting forth various requirements of various agencies, associations, etc., in this state as compared with those in Massachusetts as having no bearing on the issues before the Commissioner.

Mr. Strang: I thought they would be relative on the grounds that Mr. Steffen is trying to show a comparison, which I believe you said would entail a great length of time, between the conditions required by the Boston Market and those required by the New York Market. However, I do think it is relevant in this case because it would create unfair competition with the different restrictions.

Mr. Titus: I will have to put Mr. Whiting back on the stand and show where the Massachusetts regulations are tougher than the New York regulations.

The Chair: I will sustain the objection to that sort of testimony on the grounds that in order to make a complete comparison it would be almost physically impossible to do it here today, and whether or not such a comparison would be necessary to decide the issue in this matter is in question. I am going to sustain the objection and leave the testimony of Mr. Steffen that is in there now for what the Commissioner may feel it is worth.

Mr. Titus: May I respectfully request an exception?

The Chair: Yes.

[fol. 96] Mr. Titus:

Q. How many trucks did you say you have hauling to your plant at Buskirk?

A. Possibly 30.

Q. How many come from the Greenwich area?

A. About 8 or 9.

Q. Is that all within 10 miles of Greenwich?

A. Within about 15 miles.

Q. Who pays the trucking charges on milk delivered to you?

A. The farmers.

Q. Do you give any trucking subsidies?

A. We do.

Q. What are they?

A. We give a man here and there in some cases where competition warrants it—where ~~blood~~ <sup>blood</sup> has gone in and offered premiums we do it to retaliate.

Mr. French: I object to that. The answer is not responsive.

Q. Do you give them?

A. Yes.

Q. What did you say was your total number of truckers?

A. Possibly 25 or 30.

Q. Of the 25 bringing to you, how many at the present time are getting any subsidies?

A. Very few.

Q. Five?

A. Ten or fifteen.

Q. Maybe fifteen?

A. Maybe fifteen.

Q. In the past, referring to the same truckers, was some subsidy given to them when they first started to bring in the milk?

A. How long ago?

Q. We will start out within the last year?

A. Yes.

Q. How many?

A. Ten or fifteen.

Q. How much does that subsidy amount to?

A. It varies.

[fol. 97] Q. What is the amount?

A. It varies in comparison to what other people offer.

Q. What was the amount of subsidy you gave in the last year?

A. Twenty cents, the amount of the hauling.

Q. That is the complete cost of the hauling?

A. That is right.

Q. I assume that over a period of three or four years back of that other truckers who delivered to you got the same subsidy or some sort of subsidy?

A. I would not say that. We had to meet competition during the short period. We have to do something to protect the truckmen as well as ourselves. We had one instance. Green came to me and said, "Hood offered me 40 cents for my milk."

Mr. Titus: I move to strike out anything that was told to him as being hearsay. I move to strike it out.

The Chair: Objection sustained.

Q. You stated that were the Greenwich plant to open, your truckers would be inclined to give up their routes because they could not carry Hood milk and your milk on the same truck.

A. That is correct.

Q. What are they doing now around Eagle Bridge and Salem?

A. They are doing it now. The restriction was lifted during the shortage. Now the Health Department has issued an order to discontinue.

Q. When does that go into effect?

A. April 1.

Q. The situation will be no different with trucks from Greenwich than with trucks from Eagle Bridge and Salem?

A. I do not know what you mean.

[fol. 98] Q. Your truckers will lose the milk?

A. We assume so.

Mr. Titus: That is all.

Mr. French:

Q. How many producers do you actually get from this so-called Greenwich area—15 mile radius?

A. About 100. Our plant is not nearly run to capacity. We have maintained a pay roll all winter to take care of any surplus, and we are in a position to handle any amount of surplus in that area.

Q. What is your total plant capacity?

A. We can handle 3,000 cans.

Q. What was your peak in the flush season of 1945?

A. We got in about 1500 cans of our own milk.

Q. What do you mean by "our own milk"?

A. Milk directly delivered to the plant at Buskirk. We operate another plant at Middletown Springs and we take the output of that plant and during the surplus period they ship me about 600 cans to manufacture at Buskirk.

Q. Direct delivery is all we are interested in.

A. There was a time last year when we had up to 2200. We have lost producers and we are now handling less than 1,000 cans. Our peak will be about 1400 or 1500 this year.

Mr. French: That is all.

[fol. 99] WILLIAM GREEN, being duly sworn, testified as follows:

Mr. French:

Q. What is your full name?

A. William Green, Jr.

Q. Where do you live?

A. 1701 Union St., Schenectady, N.Y.

Q. What is your business?

A. Milk and ice cream.

Q. You operate a regular dairy business?

A. That is right.

Q. Do you buy direct from producers?

A. That is right.

Q. How long have you been doing that?

A. Since 1927.

Q. Do you have a statement that you wish to make opposing the granting of this extension?

A. Yes.

We buy milk through Elnora, Johnsonville, and East Lyon.

Q. All Saratoga County?

A. We go within five miles of Saratoga on the south side. Hood is down in that territory now.

Q. What do you mean "down in that territory"? Have they been soliciting business?

A. Yes, and that is within five miles of Schenectady. We feel if this is granted for Greenwich, they will soon go to Johnsonville.

Q. What about this five miles—

A. Through Elnora and Johnsonville.

Q. Johnsonville is more than five miles of Schenectady. Are you talking about the town or Hamlet of Johnsonville?

A. From Aqueduct Bridge is where Schenectady starts, and from there to Johnsonville I believe is five miles.

[fol. 100] Q. How far is it from the City of Schenectady, where your plant is, to those producers who have been solicited?

A. Seven miles.

Q. Your plant is only two miles from Aqueduct Bridge?

A. That is right. Our producers were shut out for unsanitary barns.

Q. You had some producers who were shut out by the Schenectady Board of Health because of unsanitary conditions?

A. That is right, and they were notified to be cleaned up in 10 days, and the very next morning this milk went to Hood.

Mr. Titus: I move to strike that out as not being within the personal knowledge of this witness.

A. It is within my knowledge. I was out there and tried to get the farm back to my plant.

Q. Did you see it go to Hood?

A. I did not see it go to Hood. I did see his milk checks.

Mr. Titus: I still move to strike it out.

The Chair: I sustain the objection.

Mr. Titus: I move to strike it out.

• The Chair:

Q. In the case of those producers, you say that you saw checks that they received from the Hood Company?

A. Yes.

The Chair: You have no objection to that, have you?

Mr. Titus: I object to that on the grounds that there is no proof as to what the checks were for.

[fol. 101] A. We are restricted by O. P. A. on butterfat and things that we can pay, and these producers go to Hood and it is impossible for us to hold them. Our milk has been cut down 50 per cent in our local area.



Mr. Titus:

Q. These producers that you lost that were closed by the Board of Health, how many were there?

A. Two.

Q. Isn't it a fact that if they did go to some other dealer that they were not accepted and allowed to deliver to that dealer until two weeks later, and not the next day?

A. That is not true. They were taken the next day.

Q. How do you know?

A. I was there to see if he was getting his barn in shape.

Q. You mean the farmer told you that?

A. I saw his statements. He started the very next day. He still has them in his files.

Q. Who is "he"?

The Chair: It is not pertinent to this hearing to know the name.

Mr. Titus:

Q. As a matter of fact, of your own personal knowledge you don't know whether they went to anybody else or to whom they went?

A. Yes, I do. I was there and saw their truckman pick it up.

Q. Whose truckman?

A. Hood's.

Q. How do you know it was their truckman?

A. How do you know who you are?

---

[fol. 102] At this time JOHN W. CLAYDON, was duly sworn, and testified as follows:

Mr. French:

Q. Are you connected with the Troy Area Dairy Council?

A. I am appearing for the Troy Area Dairy Council.

Q. What is your address?

A. R. F. D. No. 4, Troy.

Q. And the Dairy Council's address?

A. 1531 Sixth Avenue, Troy.

Q. What does the Dairy Council consist of?

A. It consists of about 90 per cent of the plants in the Troy area.

Q. What position do you hold with the Council?

A. Executive Secretary.

Q. How long have you held that position?

A. Four months.

Q. How long has the Council been in existence?

A. About 8 months.

Q. Were you authorized by the Council to appear here today to oppose the granting of this extension?

A. I was.

Q. Proceed.

A. We are appearing to oppose the granting of this extension due to the fact that there has been a shortage of milk in the Troy area since last fall, when it was necessary to curtail deliveries of approximately 10 per cent and there was no cream. The granting of this license would further put us in a bad position due to the fact that there is only approximately 25 miles between Troy and Greenwich, and naturally if they took on some producers they would take some producers from the Troy area.

Q. How do you arrive at the conclusion that it would be [fol. 103] from the Troy area?

A. Some plants in Troy now are getting milk in that vicinity.

Q. You do not want to lose any producers now shipping to Troy plants?

A. That is right, because at the present time there is a shortage of milk, and if they lost more it would be just that much more acute.

Q. Do you know how many producers your Council purchase milk from?

A. No, I do not.

Mr. Titus:

Q. Do you know how many dealers purchase milk from producers in this area?

A. No.

Q. Then you don't know how many cans of milk they get from producers in this area?

A. No.

Q. You do not know how many producers they have in this area?

A. They have some, but I cannot say the exact number.

Mr. Titus: That is all.

**Mr. Lamont:**

Q. One dealer, who is a member of your association, recently purchased a country plant in the vicinity of Bacon Hill?

A. One of the members purchased a country plant, yes.

Q. Do you know whether that plant is now scored for the Troy market?

A. No, I do not.

Q. Do you know of your own knowledge whether that plant is to be used, assuming that a license can be obtained, to supply milk to the Troy market as a country plant?

Mr. Titus: I object on the grounds that he has already said he did not know.

[fol. 104] The Chair: Objection sustained.

Mr. Lamont: The operator of that plant is not here.

The Chair: He was here and left.

Mr. Lamont: It seems extremely important to this issue that some distributors in this market are going to the extreme of inefficiency by actually acquiring country plants—

Mr. Titus: I move that that statement be stricken from the record as having nothing to do with this proceeding.

At this time DAVID R. LALOR was duly sworn and testified as follows:

**Mr. French:**

Q. What is your full name?

A. David R. Lalor.

Q. What is your business?

A. I am employed by the General Ice Cream Company in Schenectady.

Q. In what capacity?

A. As Milk Marketing Specialist.

Q. How long have you been so employed?

A. For approximately six months I have been with them.

Q. Were you authorized to appear here by that company to oppose the granting of this extension?

A. I am.

Q. Do you have a statement that you wish to make?

Mr. Lalor: Section 258-c of Article 21 of the Agriculture [fol. 105] and Markets Law of the State of New York requires in part that the Commissioner must satisfy himself that the issuance of a license will not tend to destructive competition in a market already adequately served, and that the issuance of the license is in the public interest.

Section 258-k of the same law requires that the Commissioner insure an adequate supply of milk for the inhabitants of this state and at the same time protect the dairy industry of the state.

In view of the shortage in the Capitol District with respect to milk and cream in the past two years, it is apparent that the granting of a license by the Commissioner to an out of state dealer, which will further the efforts of that dealer to take additional milk supplies out of the state to supply markets in other states, would be contrary to Sections 258-c and 258-k of Article 21 of the Agriculture and Markets Law.

Mr. Titus: I object to that statement as an assumption of law.

Mr. Lalor (cont'g): The shortage of milk and cream in the New York area to Buffalo is common knowledge, and I do not feel that any proof of the existence of such shortage is required at this hearing. However, I should like to point out that at a meeting of the Schenectady Dairy Council on March 21, at least five Schenectady milk dealers reported that they were unable to obtain sufficient milk for their needs.

Mr. Titus: I move to strike that out. It is not the best proof.

[fol. 106] Mr. Lamont: The Solicitor General of the State of New York, in discussing the admissibility of evidence in administrative hearings, recently quoted the Supreme Court of the United States on the subject of the quality of evidence which should be acceptable at hearings of this sort, and it is his opinion, as stated, that in a hearing of this sort we accept evidence upon which businessmen are accustomed to rely in the business which is being regulated by the tribunal holding the hearing.

I suggest that this evidence is within the scope of that limitation and should be admitted.

Mr. Titus: I am acquainted with that since a good friend of mine wrote it, and it is always within the power of the Hearing Commissioner to accept or reject any testimony



**FINANCIAL STATEMENT OF ASSETS AND LIABILITIES OF APPLICANT**

184\_

## ASSETS

## LIABILITIES

Oct 20 1961 See Schedule Attached

Only in book

Accounts owing by customers, good and collectible, not pledged or sold (as per Schedule A)

Notes owing by customers, good and collect-  
ible, not pledged or sold (as per Schedule B)

Merchandise: (not on consignment or conditional sale). How valued: Cost \_\_\_\_\_  
Market \_\_\_\_\_

Other quick assets: (Describe)

**TOTAL QUICK ASSETS**

Machinery: (Cost \$\_\_\_\_\_)

**Depreciated (Deduct)**

### Fixtures and other Equipment

(Case 2)

Depreciated 8

**Land and Buildings (as per Schedule C)**

Notes and Accounts owing from Officers,  
employees, or others not customers\_\_\_\_\_

Other assets (Describe)

**TOTAL ASSETS**

## SCHEDULE A

State nature of accounts, how long outstanding, and if disputed, or overdue, explain.

## ACCOUNTS RECEIVABLE

ACCOUNTS PAYABLE

[illegible]**TOTAL ASSETS**

## TOTAL

## SCHEDULE A

State nature of accounts, how long outstanding, and if disputed, or overdue, explain.

## ACCOUNTS RECEIVABLE

**ACCOUNTS PAYABLE**

TOTAL			TOTAL		

## SCHEDULE B

Give full particulars as to nature of notes, and if disputed, or overdue, explain.

## NOTES RECEIVABLE

## NOTES PAYABLE

TOTAL			TOTAL		

**SCHEDULE C: REAL ESTATE**—If recorded other than in name of Applicant, state relationship to Applicant.

Description and location	Recorded in name of	Value	Amount of Exemptions
	TOTAL		

20 Insurance on merchandise \$

On buildings \$

21. Net profit last fiscal year \$

Net loss last fiscal year \$

22 Is the financial condition of the applicant, at the date of making this application, as good as indicated by the detailed financial statement above? YES

23. As of date of this application, the applicant <sup>net</sup> worth the net sum of \$11,400.00



which he sees fit, and it is always within my power to reject or accept.

Mr. Lamont: And it is always within the power of the parties having a pecuniary interest to give their version.

The Chair: We would appreciate it very much, Mr. Lalor, if you would stick to facts that you know of your own knowledge. While the Commissioner is not bound by technical rules of evidence, we do not want to get too far afield. Then the applicant may have to come back and present further facts.

We will leave it in the record.

[fol.107] Mr. Lalor (cont'g): I should like to recall the fact that under the provisions of Section 258-m of Article 21, a Milk Marketing Order has been promulgated for the Capitol District. The evidence upon which this order was based—

Mr. Titus: I object to any evidence on which any order promulgated by any agency was based as not being within the knowledge of the witness.

The Chair: I think that is objectionable. I will sustain the objection.

Mr. Lalor: O. P. A. price ceilings established for this area have made it impossible for handlers in the Capitol District to protect themselves.

Mr. Titus: I move to strike out that statement as a conclusion of the witness. It is argumentative and a matter for argument and not of testimony.

The Chair: I will have to sustain the objection.

Mr. Lalor: I will say, Mr. Clough, that this statement is quite general. I think I can make some additions to what I have already said.

I would like to point out one thing—that the Hood Company at the present time has under consideration, or the Secretary of Agriculture, a proposal for an amendment to the Boston Milk Marketing Order.

Mr. Titus: I object to that as not being within the knowledge of the witness.

Mr. Lalor: That is within my knowledge, and I testified at the hearing in Boston.

[fol.108] Mr. Titus: Then qualify yourself. Let us hear the statement when it was.

Mr. Lalor: This was at a Federal Milk Order hearing in Boston, which was held between February 4 and February 16.



24. The maximum amount of milk received, purchased, handled or sold in any calendar month since April 1, 1944 (exclusive of the amount used by the applicant for manufacturing milk products other than cream, condensed or concentrated milk not packed in hermetically sealed cans, and exclusive of milk received outside of the State of New York and not distributed or sold within the State of New York) was received during the month of June

25. The following is a detailed statement of all milk, cream and condensed milk received, purchased, handled or sold during the month just mentioned:

- (a) Fluid milk received from producers and Cooperative Association \_\_\_\_\_ lbs
- (b) Fluid milk of own production \_\_\_\_\_ lbs
- (c) Fluid milk received from dealers (including receipts for processing) \_\_\_\_\_ lbs
- (d) Fluid milk purchased or sold (but not physically handled) \_\_\_\_\_ lbs
- (e) Cream from producers      lbs      Average fat      %      Milk Equiv \_\_\_\_\_ lbs
- (f) Cream from dealers      lbs      Average fat      %      Milk Equiv \_\_\_\_\_ lbs
- (g) Condensed from dealers \_\_\_\_\_ lbs      Average fat      %      Milk Equiv \_\_\_\_\_ lbs
- (h) Total received (in terms of milk) \_\_\_\_\_ lbs
- (i) Milk utilized for manufactured products other than cream, condensed or concentrated milk except when sold in hermetically sealed cans \_\_\_\_\_
- (j) Milk received outside the State of New York and not delivered or sold in the State \_\_\_\_\_
- (k) Total of the two foregoing items \_\_\_\_\_
- (l) Difference [item (h) less item (i)] 3,939,069
- (m) Average daily amount of item (l) 107,118

26. There is presented herewith a license fee in the sum of \$1,500.00 ☒ Check No. \_\_\_\_\_  
\$140.00 ☐ Money Order No. 7/23/46  
\$1642.00 ☐ Cash

(NOTE: All license fees must be in the form of check or money order made payable to the Department of Agriculture and Markets)

27. Do you agree not to buy milk or cream from or sell milk or cream to any milk dealer who has failed to obtain a Milk Dealer's License as required by Article 21 of the Agriculture and Markets Law? Yes

28. Did you comply with the law and all rules and orders of the Commissioner of Agriculture and Markets? Yes  
Have you filed monthly reports when due as required by Official Order? Yes

29. Do you agree to comply with the law and all rules and orders of the Commissioner of Agriculture and Markets? Yes

30. The applicant hereby represents that the statements made in this application and in the schedules accompanying it, which schedules are hereby made a part of this application, are true and correct.

Dated at Boston, Massachusetts this 19th day of February, 1946

NOTE: If corporation, firm name must be signed and each member must sign individually as well. If corporation, corporate name must be signed in ink with the officer's name and title on line below. CORPORATE SEAL MUST BE IMPRESSED.

H. P. Hood & Sons, Inc.  
(Name of Applicant Sign on line above)  
By [Signature]  
Vice President and Treasurer

Execution of this application must always be acknowledged before a notary public or other officer authorized to take acknowledgments. The name of the individual must appear in the acknowledgment.

INDIVIDUAL OR PARTNERSHIP ACKNOWLEDGMENT

STATE OF NEW YORK

Dated at Boston, Massachusetts this 19th day of February, 1946

NOTE: If corporation, firm name must be signed and each member must sign individually as well. If corporation, corporate name must be signed in ink with the officer's name and title on line below. CORPORATE SEAL MUST BE IMPRESSED.

H. P. Hood & Sons, Inc.  
(Name of Applicant Sign on line above)  
By [Signature]  
Vice President and Treasurer

Execution of this application must always be acknowledged before a notary public or other officer authorized to take acknowledgments. The name of the individual must appear in the acknowledgment.

INDIVIDUAL OR PARTNERSHIP ACKNOWLEDGMENT

STATE OF NEW YORK

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 1946, before me personally appeared \_\_\_\_\_ the above named individual to me personally known and known to me to be the same individual described in and who executed the foregoing instrument and duly acknowledged to me that he executed the same, and he further by me being duly sworn said, each for himself, that he had read the foregoing application and that the same is true in every respect.

Notary Public

Commonwealth of Massachusetts  
STATE OF NEW YORK

County of Suffolk

On this 19th day of February, 1946, before me personally came Gilbert H. Hood, Jr. to me known, who by me being duly sworn, did say that he resides in Winchester, Massachusetts that he is the Vice President and Treasurer of the H. P. Hood & Sons, Inc. the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order, and he further by me being duly sworn deposes and says that he has read the foregoing application and that the same is true in every respect.

[Signature]  
Notary Public



Mr. Titus: Who were you representing there?

Mr. Lalor: I was representing the General Ice Cream Corporation. This proposition, if approved, will further enable the Hood Company to compete with New York handlers.

Mr. Titus: I move to strike out that as a conclusion of the witness—as a matter of argument and not of testimony.

The Chair: I think it is rather remote to expect that the Commissioner would take into consideration some proposal which has been proposed but has not yet been acted upon and may not be.

Mr. Lalor: This may or may not be important. We are only trying to give the Commissioner all the facts that we can get on this thing.

Mr. Titus: It may or may not be approved, and this record has to stand on its legs as of today.

The Chair: If we were to take that into consideration we might have to wait and see how the secretary acted upon it. We cannot do that.

I will sustain the objection.

Mr. Lalor: I am afraid that is all the testimony that I have, Mr. Clough.

Mr. Titus: No questions.

Mr. French: No questions.

[fol. 109] The Chair: Is there anything else?

Mr. Titus: I have one statement that I want to make.

If the fact that different regulations between Massachusetts and New York are to be considered by the Commissioner in his determination, I must request that we be allowed at some future date—if that is determined—to put in proof on that score. I do not wish to take up the time of the hearing now, since the Hearing Commissioner here has stated that it was not a subject for consideration by the Hearing Commissioner, but I did understand that some of that testimony was left in the record for the Commissioner to decide whether or not it was material. I do not want to be precluded from putting in evidence, but I also do not want to prolong the hearing.

The Chair: Let us have it understood that if the Commissioner decides that the matter of any difference in the health regulations of the City of New York or any other municipality within the State of New York and those of

Boston is an issue, you will be given a further opportunity to present evidence.

Mr. Titus: That is perfectly satisfactory.

Mr. Strang: I would like to say that the Washington and Rensselaer Counties Co-operative Association, Inc., and Gold Medals Farms are opposed to the extension of this license.

The Chair: Hearing closed and decision reserved.

[fol. 110]

EXHIBIT 1

STATE OF NEW YORK, DEPARTMENT OF AGRICULTURE AND  
MARKETS, DIVISION OF MILK CONTROL

To: H. P. Hood & Sons, Inc., 500 Rutherford Ave., Boston, Massachusetts.

Please take notice that you are hereby directed to show cause at a hearing to be held before the Commissioner of Agriculture and Markets of the State of New York, or a person or persons designated by him at the offices of the Division of Milk Control on the twentieth floor of the State Office Building in the City of Albany, New York on the twenty-fifth day of March, 1946 at two o'clock in the afternoon of that day, or as soon thereafter as the matter can be reached, why an extension of Milk Dealer's License No. 51 heretofore issued to you for the license period ending March 31, 1946 should be granted, pursuant to the provisions of Article 21 of the Agriculture and Markets Law, to permit you to recondition and equip a milk receiving station at Greenwich, N. Y. for the purpose of purchasing and receiving milk from producers.

Take notice that at said hearing you will be afforded an opportunity to produce witnesses on your own behalf and examine witnesses, if any, produced by and for the Commissioner of Agriculture and Markets of the State of New York and to appear by Attorney, if you so desire. You are directed to produce at said hearing any and all books, statements, papers, records, documents and other evidence relevant to the above described matter. It will be impossible to grant an adjournment except



H. P. HOOD & SONS, INC.

BALANCE SHEET, FEBRUARY 29, 1944

ASSETS

Cash	\$ 802,122.46
Accounts and Notes Receivable, Customers	2,093,113.94
Accounts and Notes Receivable, Others	312,435.95
Merchandise and Supplies	2,283,404.41
Securities	6,671,773.02
Real Estate, less reserves	3,934,131.53
Machinery and Equipment, etc., less reserves	3,491,614.98
Delivery Equipment, less reserves	663,849.71
Prepaid Insurance and Taxes	80,232.33
Goodwill	1.00
Other Prepaid Expenses	536,532.33

Total \$20,871,211.96

LIABILITIES

Accounts Payable	\$ 5,435,153.89
7% Income Debentures	3,500,000.00
Reserve for Contingencies	275,000.00
Preferred Stock 7% cumulative, par \$100	1,296,400.00
Common Stock, no par value	7,543,594.12
Surplus	2,841,063.95

LIABILITIES

Accounts Payable	\$ 5,435,153.89
7% Income Debentures	3,500,000.00
Reserve for Contingencies	275,000.00
Preferred Stock 7% cumulative, par \$100	1,296,400.00
Common Stock, no par value	7,543,594.12
Surplus	2,841,063.95

Total \$20,871,211.96

RECEIVED  
DEPT. AGRIC. & MARKETS

FEB 23 1945

DIVISION OF  
MILK CONTROL



for extraordinary circumstances and in case of your failure to appear and answer, a determination will be made by default.

C. Chester DuMond, Commissioner of Agriculture and Markets of the State of New York. By Kenneth F. Fee, Director of Milk Control.

Dated and sealed at the City of Albany, New York this 13th day of March 1946. (Seal)

[fol. 112]

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EXHIBIT 2

Application for Renewal of Petitioner's License.



# APPLICATION FOR RENEWAL OF MILK DEALER'S LICENSE

TO BE FILED BY MARCH 1, 1945

(Article 21 of the Agriculture and Markets Law)  
(Chapter 126 of the Laws of 1934 as amended)

To the Commissioner of Agriculture and Markets,  
Albany, N. Y.

The undersigned hereby applies for a license to purchase, handle, sell or distribute milk, pursuant to the provisions of Article 21 of the Agriculture and Markets Law, for the period ending March 31, 1945, and in support of such application makes the following statements and answers to questions:

1. Print correctly your name and business address below

800 Rutherford Ave.  
Kptol, Massachusetts

RECEIVED  
DEPT. OF AGRICULTURE  
FEB 27 1945  
LAW OFFICE

2. (a) Do you hold an unrevoked milk dealer's license under Article 21 for the license year April 1, 1944 March 31, 1945 Yes  
(b) If so, give number 50 (c) If you have, during the past year, succeeded a licensed milk dealer in business state date, name and address of such dealer \_\_\_\_\_  
(d) Trade name of applicant \_\_\_\_\_

3 (a)  
If applicant is  
an individual

Full name \_\_\_\_\_ Age \_\_\_\_\_  
Residence address \_\_\_\_\_  
(Street and number, city and state)

3 (b)  
If applicant is  
a partnership

FULL NAMES OF ALL PARTNERS

RESIDENCE ADDRESS  
(Street and number, city and state)

AGE

3 (c)  
If applicant is  
a corporation

In what state incorporated Massachusetts Date incorporated February 2, 1920  
Principal office 800 Rutherford Avenue, Boston 20, Massachusetts  
If a foreign corporation are you qualified to do business in the State of New York? Yes If so, when? February 2, 1920  
Give name and address of person resident of this state upon whom service of process may be made Mr. G. L. Gould, Eagle Bridge, New York  
Authorized capital \$ 10,000,000 Preferred Capital paid in cash \$ 7,333,000.00 Preferred

3 (c)  
If applicant is  
a corporation

If a foreign corporation are you qualified to do business in the State of New York? Yes If so, when? February 2, 1920  
Give name and address of person resident of this state upon whom service of process may be made Mr. G. L. Gould, Eagle Bridge, New York  
Authorized capital \$ 10,000,000 Preferred Capital paid in cash \$ 7,333,000.00 Preferred

FULL NAME OF	RESIDENCE ADDRESS (Street and number, city and state)	DATE OF TAKING OFFICE
President <u>J. P. Hood</u>	<u>2 Larchwood Drive, Cambridge</u>	<u>May 3, 1944</u>
Vice President <u>Gilbert H. Hood, Jr.</u>	<u>6 Everett Ave., Winchester</u>	<u>May 3, 1944</u>
Secretary <u>Foland H. Boutwell 2nd</u>	<u>20 Foxcroft Rd., "</u>	<u>May 3, 1944</u>
Treasurer <u>Gilbert H. Hood, Jr.</u>	<u>6 Everett Ave., "</u>	<u>May 3, 1944</u>
Directors <u>The above and</u>		
<u>Harold M. Lewis</u>	<u>131 Mystic Street, West Melford</u>	<u>May 3, 1944</u>

4. How many milk cows do you keep? NONE No milked now? \_\_\_\_\_ Qts produced daily \_\_\_\_\_  
5. Do you purchase milk or cream from (a) milk producers? Yes If so, how many? 750  
(b) any cooperative association? Yes (c) any other dealer? Yes  
6. The maximum amount paid by applicant to producers, a Cooperative Association or the individual producer members of a Cooperative Association for milk and/or cream purchased during any one month during the year immediately prior to making this application was \$ 275,000.00 and was paid during the month of June 1944  
7. State amount of surety bond or securities in lieu thereof filed with the Department for the license years ending March 31, 1945 \$ 40,000.00 March 31, 1946 \$ 40,000.00  
8. Give details with reference to payments made by you for milk received or purchased.  
On what days are payments regularly made? 3rd and 1st Show period covered by payment 1-15th and 1-31st.  
Are any payments for milk now past due? No If so, state amount and reasons \_\_\_\_\_  
9. The maximum value of the milk and/or cream expected to be purchased by applicant from producers, a Cooperative Association or the individual producer members of a Cooperative Association in any one month during the license year ending March 31, 1946 is estimated at \$ 275,000.00 and it is believed that such maximum will be purchased during the month of June 1945



NAME BY WHICH PLANT IS KNOWN	POST OFFICE ADDRESS OF PLANT	COUNTY	NAME OF PLANT MANAGER
P. 1001	Long, Int. Knole Bridge, N. Y.	Netherlands	F. A. Dunham
P. 1002	Long, Int. Salem, New York	Washington	E. A. Stearns
P. 1003	Long, Int. Norfolk, New York	St. Lawrence	G. Wilson

NAME	ADDRESS	COMMODITY PURCHASED	APPROX DAILY AMOUNT	PRICE PAID

[illegible][illegible][illegible]

15 Give nature of business transacted:

Do you sell milk and/or cream to other licensed dealers? Yes If so, how many? One

If operating in New York City, to how many Class C dealers do you sell milk? \_\_\_\_\_

Do you operate delivery routes? No If so, give below number of each type of route operated:

- If applicant operates more than one city plant, attach supplement, giving name and address of each plant or branch and details as to business transacted at each.

17. Has judgment been entered against you, upon which execution has been returned unsatisfied? \_\_\_\_\_

If so, state when, what court and nature of judgment. No

113a



[fol. 114]

## EXHIBIT 3

## License No. 51

STATE OF NEW YORK, DEPARTMENT OF AGRICULTURE AND MARKETS,  
DIVISION OF MILK CONTROL

1945 [Seal] 1946

Pursuant to the provisions of Article 21 of the Agriculture and Markets Law (Chapter 126 of the Laws as 1934, as amended), H. P. Hood & Sons, Inc. (Name of Licensee), of 500 Rutherford Ave., Boston, Mass. (Address), hereinafter referred to as the licensee is, unless otherwise restricted, conditioned, or limited below, hereby licensed to purchase milk or cream from other licensed milk dealers, exclusive of cooperative associations. In case the licensee has filed a surety bond or has been relieved from so doing by the undersigned Commissioner, the licensee is, unless otherwise restricted, conditioned, or limited below, hereby licensed to purchase milk or cream from producers at the plant or plants named in the licensee's application only, and from cooperative associations licensed pursuant to Article 21 of the Agriculture and Markets Law. The licensee is, unless otherwise restricted, conditioned, or limited below, licensed to deal in, handle, distribute, or sell, in accordance with the intent indicated in the licensee's application, milk or cream, or both, in the place or places specifically named therein, and in no other place or places, and then only on the route or number of routes of the character (wholesale or retail) indicated therein. No milk or cream shall be purchased from or sold to a dealer required to be licensed unless such dealer be duly licensed.

This license is valid until March 31, 1946, unless sooner revoked.

C. Chester DuMond, Commissioner of Agriculture and Markets. By ———, Director, Division of Milk Control.

Dated at Albany, N. Y. April 1, 1945.

\$1,505.00 fee paid for license.

140.00 2/23/46

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1,645.00

This License Cannot Be Sold or Transferred.

[fol. 116]

## EXHIBIT 4

H. P. Hood &amp; Sons

Dairy Products

500 Rutherford Avenue, Boston 29, Mass.

Executive Offices

January 30, 1946.

Mr. J. A. Conboy, Supervisor of Licensing, Division of Milk Control, Department of Agriculture and Markets, Albany 1, New York.

DEAR MR. CONBOY:

We have an option to purchase certain property in Greenwich, New York formerly operated as the Greenwich and Easton Farm Products Company. We wish to take the machinery, now at Eagle Bridge, for receiving milk to Greenwich and install it to make a complete receiving station, buying milk direct from producers. Many of our routes into Eagle Bridge and Salem are too long, and it is very difficult for us to get the milk in and dumped by nine o'clock. We expect to take about 200 cans of milk off of Eagle Bridge and 100 cans off of Salem and turn it into the plant at Greenwich as a better means of serving producers.

We hereby request License blank suitable for what we wish to do, and in compliance with your Orders and Regulations. On receipt of same we will submit you an application for a License together with whatever necessary data and [fol. 117] fees you require. May we hear from you at your earliest convenience?

Very truly yours, Don N. Geyer, General Manager,  
Country Division.

DNG/O.

P.S. The new Eagle Bridge plant is equipped throughout with new machinery and will start operating April 1. DNG.

[fol. 118]

## EXHIBIT 5

Application for Renewal of Milk Dealer's License for 1947.



389 FEB 15 46

# APPLICATION FOR RENEWAL OF MILK DEALER'S LICENSE TO BE FILED BY MARCH 1, 1946

(Article 21 of the Agriculture and Markets Law)  
(Chapter 126 of the Laws of 1934 as amended)

To the Commissioner of Agriculture and Markets,  
Albany, N. Y.

The undersigned hereby applies for a license to purchase, handle, sell or distribute milk, pursuant to the provisions of Article 21 of the Agriculture and Markets Law for the period ending March 31, 1947, and in support of such application makes the following statements and answers to questions:

1. Print correctly your name and business address below

P. HOOD & SONS, INC.  
500 Rutherford Ave.  
Boston, Massachusetts  
Mass

DEPT. OF AGRICULTURE  
FEB 15 1946  
MILK DEPARTMENT  
LEAVE THIS SPACE BLANK

2. (a) Do you hold an unexpired milk dealer's license under Article 21 for the license year April 1, 1945—March 31, 1946? Yes  
(b) If so, give number 51 (c) If you have, during the past year, succeeded a licensed milk dealer in business state date, name and address of such dealer \_\_\_\_\_  
(d) Trade name of applicant \_\_\_\_\_

3 (a). If applicant is an individual	Full name _____	Age _____
	Residence address _____ (Street and number, city and state)	

3 (b). If applicant is a partnership	FULL NAMES OF ALL PARTNERS	RESIDENCE ADDRESS (Street and number, city and state)	AGE
	_____	_____	_____

3 (c). If applicant is a corporation	In what state incorporated <u>Massachusetts</u> Date incorporated <u>February 2, 1920</u>
	Principal office <u>500 Rutherford Avenue, Boston 29, Mass.</u>
	If a foreign corporation are you qualified to do business in the State of New York? <u>Yes</u> If so, when? <u>February 2, 1920</u> Give name and address of person resident of this state upon whom service of process may be made. <u>Mr. George L. Gould, Eagle Bridge, New York</u> <u>Common No. 10</u> <u>6,449,228-10</u>

3 (c). If applicant is a corporation	Principal office <u>500 Rutherford Avenue, Boston 29, Mass.</u>
	If a foreign corporation are you qualified to do business in the State of New York? <u>Yes</u> If so, when? <u>February 2, 1920</u> Give name and address of person resident of this state upon whom service of process may be made. <u>Mr. George L. Gould, Eagle Bridge, New York</u> <u>Common No. 10</u> <u>6,449,228-10</u>
	Authorized capital <u>\$10,000,000</u> Preferred _____ Capital paid in cash <u>\$7,733,600.00</u> Preferred _____

FULL NAME OF	RESIDENCE ADDRESS (Street and number, city and state)	DATE OF TAKING OATH
President <u>J. P. Hood</u>	<u>2 Larchwood Drive, Cambridge</u>	<u>May 2, 1945</u>
Vice President <u>G. E. Hood, Jr.</u>	<u>6 Everett Ave., Winchester</u>	" " "
Secretary <u>Roland d. Boutwell, 2nd</u>	<u>20 Foxcroft Rd.</u>	" " "
Treasurer <u>G. E. Hood, Jr.</u>	<u>6 Everett Ave.,</u>	" " "
Directors <u>The above and</u> <u>Harold K. Lewis</u>	<u>131 Mystic St. West Medford</u>	" " "

4. How many milk cows do you keep? None No. milked now? \_\_\_\_\_ Qts. produced daily \_\_\_\_\_  
5. Do you purchase milk or cream from (a) milk producers? Yes If so, how many? 729  
(b) any cooperative association? No (c) any other dealer? No  
6. The maximum amount paid by applicant to producers, a Cooperative Association or the individual producer members of a Cooperative Association for milk and/or cream purchased during any one month during the year immediately prior to making this application was \$300,000.00 and was paid during the month of June 1945  
7. The maximum value of the milk and/or cream expected to be purchased by applicant from producers, a Cooperative Association or the individual producer members of a Cooperative Association in any one month during the license year ending March 31, 1947 is estimated at \$300,000.00 and it is believed that such maximum will be purchased during the month of June 1946  
8. Give details with reference to payments made by you for milk received or purchased.  
On what days are payments regularly made? 3rd and 15th Show period covered by payment 1-15th and 16-31st.  
Are any payments for milk now past due? No If so, state amount and reasons \_\_\_\_\_  
9. State amount of surety bond or securities in lieu thereof filed with the Department for the license years ending:  
March 31, 1946 \$40,000.00 March 31, 1947 \$



11. List below each plant or station in New York State owned or operated by you where you receive milk or cream from producers or individual members of cooperative associations.

NAME OF PLANT	POST OFFICE ADDRESS OF PLANT	COUNTY	NAME OF PLANT MANAGER
E. P. Hunt & Sons, Inc.	Eagle Bridge, N. Y.	Rensselaer	F. A. Dunham
	Norfolk, N. Y.	St. Lawrence	O. Wilson
	Salem, N. Y.	Washington	E. A. Stearns

12. Give below the name of each milk dealer or cooperative association from whom you are purchasing milk or cream.

NAME	ADDRESS	COMMODITY PURCHASED	APPROX. DAILY AMOUNT	PRICE PAID

13. Give below details regarding each health permit which you hold.

Type of Permit	Name of Health Officer Issuing Each Permit	Nature of Permit from Health Officer (State if Wholesale or Retail or if limited in any way)	Date Permit Expires (Give exact information)		
			Mo.	Day	Year

14. List below each city, village, and hamlet in which you sell milk or cream. Dealers in New York City give Borough or District in which you serve. If you serve places other than the cities, villages, and hamlets listed below, attach a list of such other places with each such area specifically and furnish information similar to that required below for each such area. Do not include any place not served every community therein.

NAME OF PLACE SERVED	Length of Time You Have Served Each Place		Give Nature of Operations in Each Place. Answer "Yes" or "No"				Approximate No. Quarts of Milk Sold Daily at Each Place Named
	Years	Months	Deliver to Retail Customers	Deliver to Wholesale Customers	Sell to Other Dealers	Sell at Farm or at Plant	
None in New York State.							

15. Do you agree not to sell milk or cream in any place or places other than those named in answer to question 13 above, unless hereafter authorized in writing by the Commissioner to sell in other places? Yes

16. Give nature of business transacted. Do you sell pasteurized milk? No raw milk? No

Do you utilize milk or cream for manufacture? Yes Do you operate a pasteurizing plant? No

Do you process milk for others? No

Do you sell milk and/or cream to other licensed dealers? No If so, how many? \_\_\_\_\_

If operating in New York City, to how many Class I dealers do you sell milk? \_\_\_\_\_

17. How many delivery routes do you operate? NONE

Describe them below

(a) \_\_\_\_\_ Routes serving house customers (retail)

(b) \_\_\_\_\_ Routes serving stores, restaurants, hotels or institutions (wholesale)

(c) \_\_\_\_\_ Routes where both retail and wholesale trade are served

(d) \_\_\_\_\_ Routes supplying other licensed dealers only

\_\_\_\_\_ Total number routes operated

If applicant operates more than one city plant, attach supplement, giving name and address of each plant or branch and details as to business transacted at each.

18. Are you surety or endorser upon any bond, note, or other obligation not included in following statement of liabilities?

If so, give names and amounts. No

19. Has judgment been entered against you, upon which execution has been returned unsatisfied?

If so, state when, what court and nature of judgment. No

20. Is any suit, action or proceeding pending against you, which relates directly or indirectly to any purchase of milk or cream? No If so, state plaintiff's name and residence and the nature of such action or proceeding and the full title thereof.



# FINANCIAL STATEMENT OF ASSETS AND LIABILITIES OF APPLICANT

as of

(Date here)

194

## ASSETS

## LIABILITIES

Cash on hand and in Bank See Schedule Attached

Accounts owing by customers, good and collectible, not pledged or sold (as per Schedule A)

Notes owing by customers, good and collectible, not pledged or sold (as per Schedule B)

Merchandise (not on consignment or consignment) How valued?

At Cost or Market?

Other quick assets (Describe)

### TOTAL QUICK ASSETS

Machinery: (Cost \$

Depreciated (Deduct)

Tractors and other Equipment:

(Cost \$

Depreciated \$

Land and Buildings (as per Schedule C)

Automobiles & Trucks

Notes and Accounts owing from Officers, employees, or others not customers

Livestock

Other assets (Describe)

### TOTAL ASSETS

Value of Milk and Cream purchased but not paid for (as per Schedule A)

Other accounts due or past due (as per Schedule A)

Other accounts not due (as per Schedule A)

Notes payable for Milk (as per Schedule B)

For BORROWED MONEY Notes payable to banks (as per Schedule B)

Notes or debts payable to others (including relatives and friends) (as per Schedule B)

Owing for Wages and Salaries

Owing for Taxes (city, state and federal)

Owing for Rental

Owing for Insurance Premiums

### TOTAL QUICK LIABILITIES

Debt secured by mortgage on land or buildings (as per Schedule C)

Debt secured by chattel mortgage or other liens

Debt secured by judgment

Other liabilities: (Describe)

### TOTAL LIABILITIES

Capital Stock Preferred

Common

Surplus & Undivided Profits

### TOTAL LIABILITIES & NET WORTH

#### SCHEDULE A

State nature of accounts, how long outstanding, and if disputed, or overdue, explain.

#### ACCOUNTS RECEIVABLE

#### ACCOUNTS PAYABLE

#### SCHEDULE A

State nature of accounts, how long outstanding, and if disputed, or overdue, explain.

#### ACCOUNTS RECEIVABLE

#### ACCOUNTS PAYABLE

#### SCHEDULE B

Give full particulars as to nature of notes, and if disputed, or overdue, explain.

#### NOTES RECEIVABLE

#### NOTES PAYABLE

#### SCHEDULE C: REAL ESTATE—If recorded other than in name of Applicant, state relationship to

Description and location

Recorded in name of

Value

#### TOTALS

20. Insurance on merchandise \$

On buildings \$

21. Net profit last fiscal year \$

Net loss last fiscal year \$

22. Is the financial condition of the applicant, at the date of making this application, as good as indicated by the statement above?

23. As of date of this application, the applicant is worth the net sum of \$ 11,376,000.00



24. The maximum amount of milk received, purchased, handled or sold in any calendar month since April 1, 1945 (exclusive of the amount of milk received, purchased, handled or sold in any calendar month prior to April 1, 1945) is other than cream, condensed or concentrated milk not packed in hermetically sealed cans, and exclusive of milk received outside the State of New York and not distributed or sold within the State of New York) was received during the month of JUNE 1945

25. The following is a detailed statement of all milk, cream and condensed milk received, purchased, handled or sold during the month just mentioned:

(a) Fluid milk received from producers	3,722,754	lbs
(b) Fluid milk of own production		lbs
(c) Fluid milk received from dealers (including receipts for processing)		lbs
(d) Fluid milk purchased or sold (but not physically handled)		lbs
(e) Cream from producers		lbs
(f) Cream from dealers		lbs
(g) Condensed from dealers		lbs
(h) Total received (in terms of milk)	3,722,754	lbs
(i) Milk utilized for manufactured products other than cream, condensed or concentrated milk except when sold in hermetically sealed cans		
(j) Milk received outside the State of New York and not delivered or sold in the State		
(k) Total of the two foregoing items		
(l) Difference [Item (h) less Item (k)]	9,722,754	
(m) Average daily amount of Item (l)	324,042	

26. There is presented herewith a license fee in the sum of \$1,000.00 ☒ Check No. \_\_\_\_\_  
☐ Money Order No. \_\_\_\_\_  
☐ Cash

(NOTE: All license fees must be in the form of check or money order made payable to the Department of Agriculture and Markets.)

27. Do you agree not to buy milk or cream from or sell milk or cream to any milk dealer who has failed to obtain a Milk Dealer's License as required by Article 21 of the Agriculture and Markets Law? Yes

28. Did you comply with the law and all rules and orders of the Commissioner of Agriculture and Markets? Yes  
Have you filed monthly reports when due as required by Official Order? Yes

29. Do you agree to comply with the law and all rules and orders of the Commissioner of Agriculture and Markets? Yes

30. The applicant hereby represents that the statements made in this application and in the schedules accompanying it, which schedules are hereby made a part of this application, are true and correct.



Dated at Boston, Mass.  
this 11th  
February 1945

H. E. Hood & Sons, Inc.  
(Name of Applicant Sign on Above Line)



Dated at Boston, Mass.  
this 11th  
February 1945

H. E. Hood & Sons, Inc.  
(Name of Applicant Sign on Above Line)

By [Signature]  
Title Vice President & Treasurer

NOTE: If corporation, a power must be signed and one member must sign individually as well as corporation, corporate name must be stated in full and title on line below.

Execution of this application must always be acknowledged before a notary public or other officer authorized to take acknowledgments. The name of the individual must appear in the acknowledgment.

#### INDIVIDUAL OR PARTNERSHIP ACKNOWLEDGMENT

STATE OF NEW YORK

County of \_\_\_\_\_ } ss:  
On this \_\_\_\_\_ day of \_\_\_\_\_, 1945, before me personally appeared \_\_\_\_\_ the above named individual to me personally known and known to me to be the same individual described in and who executed the foregoing instrument and duly acknowledged to me that he executed the same, and he further by me being duly sworn said, each for himself, that he had read the foregoing application and that the same is true in every respect.

Notary Public

#### Commonwealth of Massachusetts CORPORATE ACKNOWLEDGMENT

County of Suffolk } ss:  
On the 11th day of February, 1945, before me personally appeared G. E. Hood, Jr. to me known, who by me being duly sworn, did say that he is the Vice President and Treasurer of the H. E. Hood & Sons, Inc. the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name therein by like order; and he further by me being duly sworn deposes and says that he has read the foregoing application and that the same is true in every respect.

Reginald Umbach  
Notary Public



# **L. J. ROSS & SONS, INC.**

**BALANCE SHEET. DECEMBER 31, 1942**

## **ASSETS**

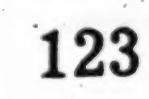
Cash	1,442,422.47
Accounts and Notes Receivable, Customers	2,004,000.00
Accounts and Notes Receivable, Others	700,000.00
Merchandise and Supplies	2,400,000.00
Securities	1,000,000.00
Real Estate, less Reserves	1,114,000.00
Machinery and Equipment, etc., less reserves	3,072,000.00
Delivery Equipment, less reserves	772,377.34
Prepaid Insurance and Taxes	100,000.00
Goodwill	1.00
Other Prepaid Expenses	520,000.00
	<hr/>
<b>Total</b>	<b>\$22,239,822.40</b>
	<hr/>

Delivery Equipment, less reserves	772,377.34
Prepaid Insurance and Taxes	100,000.00
Goodwill	1.00
Other Prepaid Expenses	520,000.00
	<hr/>
<b>Total</b>	<b>\$22,239,822.40</b>
	<hr/>

## **LIABILITIES**

Accounts Payable	2,771,422.47
7% Income Retentions	1,770,000.00
Reserve for Contingencies	100,000.00
Preferred Stock \$5 cumulative, par \$100	7,770,000.00
Common Stock, no par value	3,000,000.00
Surplus	600,000.00
	<hr/>
<b>Total</b>	<b>\$22,239,822.40</b>
	<hr/>







[fols. 120-121]

## EXHIBIT 6A

## Middletown Milk &amp; Cream Co., Inc.

Number of Producers Delivering Milk to Fort Edward,  
N. Y. Plant January, 1941 to March, 1946

Month	1941	1942	1943	1944	1945	1946
January	295	277	265	226	210	209
February	288	277	262	224	214	212
March	287	277	264	223	218	214
April	288	279	260	223	220	
May	288	278	258	227	220	
June	286	276	254	229	222	
July	293	278	253	228	225	
August	280	278	247	228	223	
September	281	277	245	230	222	
October	282	272	240	229	221	
November	286	270	236	223	214	
December	281	264	233	222	210	

Average Daily Milk Receipts (in Pounds)—Fort Edward,  
N. Y. Plant

Years 1941 to 1945

	High	Low
1941	85,696	59,205
1942	91,499	54,285
1943	88,276	45,740
1944	84,273	49,386
1945	88,193	44,960

[fol. 122]

## EXHIBIT 6B

Chart.

(Here follows 1 photolithograph, side folio 123)

[fol. 124] IN SUPREME COURT OF NEW YORK, ALBANY  
COUNTY

(Supreme Court, Albany County Special Term, June 14,  
1946)

(Decided July 20, 1946)

(Justice Isadore Bookstein, presiding)

APPEARANCES:

Whalen, McNamee, Creble & Nichols, Esqs., of Albany,  
N. Y., Attorneys for the Petitioner, for the motion.

Donald L. Brush, Esq., of Albany, N. Y. (Robert G.  
Blabey, Esq., of Albany, N. Y., of Counsel), Attorney for  
the Respondent, opposed.

MEMORANDUM

BOOKSTEIN, J.:

Petitioner is a milk dealer, duly licensed as such, under  
Article 21 of the Agriculture and Markets Law. On or  
about February 11, 1946, it duly filed its application for a  
renewal of its license for the license year ending March 31,  
1947. Shortly prior thereto, petitioner also duly applied  
for an extension of its license to permit operation of a milk  
plant at Greenwich, New York.

The application for a renewal of license was granted;  
the application for an extension to permit operation of  
[fol. 125] the plant at Greenwich was denied.

Petitioner has instituted this proceeding seeking the  
ultimate relief of favorable action on its aforesaid appli-  
cation for an extension of its operations.

This is a proceeding under Article 78 of the Civil  
Practice Act and the parties are apparently agreed that  
an order should be made transferring and referring the  
proceedings to the Appellate Division, Third Department,  
for determination.

On the return day of petitioner's notice herein, re-  
spondent, in accordance with Section 1293 of the Civil Prac-  
tice Act, moved for an order dismissing as a matter of  
law, that part of the petition found in the paragraph  
thereof designated "15," that the order sought to be  
reviewed herein, in so far as it denied petitioner's applica-  
tion for an extension, "constituted a failure on the part



of the respondent to perform a duty of the respondent enjoined upon him by law.”

In practical effect, what respondent seeks to accomplish is the striking out, from the petition herein, of the language above quoted.

Respondent's quarrel with the language thus employed is that it constitutes this proceeding one in the nature of mandamus; that the allegations of the petition do not disclose that the petitioner has a clear, legal right to such relief; and that, in the circumstances set forth in the petition, a proceeding in the nature of mandamus will not lie.

[fol. 126] It is quite probable that whether the challenged allegation remains in the petition or not, the ultimate result will not be affected thereby, since, under Article 78, “when a suitor shows a right to some relief the court grants the relief to which he is entitled, unrestricted by the form of the proceedings brought by the aggrieved person. (Matter of Newbrand v. City of Yonkers, 285 N. Y. 164 (174)).

But, as recognized in the Newbrand case, *supra*, at pages 174 and 175, it is equally true, however, that so far as the questions of fact and of law, which the respondent would be called upon to meet, would differ in a proceeding in the nature of mandamus from one in the nature of certiorari.

Subdivision 3 of Section 1284 of the Civil Practice Act reads as follows:

“The expression ‘to compel performance of a duty specifically enjoined by law’ refers to all other relief heretofore available in a mandamus proceeding.”

The language complained of by respondent in part, is almost, in *haec verba*, the language of Subdivision 1 of Section 1296 of the Civil Practice Act, which reads as follows:

“In a proceeding under this article, the questions involving the merits to be determined upon the hearing are the following only: 1. Whether the respondent failed to perform a duty specifically enjoined upon him by law.”

[fol. 127] A proceeding which seeks to compel the performance of a duty enjoined by law upon public officers,



would, prior to the enactment of Article 78 of the Civil Practice Act, have been in the nature of mandamus. (Matter of DeLack v. Greene, 170 Misc. 309.)

Clearly, therefore the language of Subdivision 3 of Section 1284 and of Subdivision 1 of Section 1296 of the Civil Practice Act, and the language complained of are peculiarly and particularly applicable to a proceeding in the nature of mandamus.

Section 258-c of the Agriculture and Markets Law provides, among other things, that:

“No license shall be granted to \* \* \* authorize the extension of an existing business by the operation of an additional plant \* \* \* unless the commissioner is satisfied that the applicant is qualified by character, experience, financial responsibility and equipment to properly conduct the proposed business, that the issuance of the license will not tend to a destructive competition in a market already adequately served, and that the issuance of the license is in the public interest. ”

If a person filed an application for an extension, and the commissioner failed or refused to act thereon, one way or another, the commissioner would then be in the class of a person who “failed to perform a duty specifically enjoined upon him by law.” In such case, the aggrieved [fol. 128] party could institute a proceeding in the nature of mandamus, to compel the commissioner to make a determination either granting or denying the application; a proceeding could not be instituted solely to compel the granting of the license.

Once the commissioner has acted and denied the application, then the aggrieved party could institute a proceeding by way of certiorari to review the determination, since, by the express provisions of Section 258-d of the Agriculture and Markets Law, the determination of the commissioner becomes final, unless within thirty days from the date thereof, a proceeding is instituted to review such action by certiorari.

The petition in this proceeding discloses clearly that petitioner filed an application; that the commissioner acted in compliance with Section 258-c of the Agriculture and Markets Law, and, after a hearing, denied the application;

that, accordingly, the commissioner has performed the duty specifically enjoined upon him by law.

In other words, the conceded facts here demonstrate that petitioner's quarrel is not with a failure of the commissioner to act but with the result of his action.

In such a situation a proceeding in the nature of mandamus will not lie.

A petition fails to state a cause of action in a proceeding in the nature of mandamus, where it does not show a clear, legal right to the relief demanded. (Matter of Jaffe v. Board of Education, 265 N. Y. 160 [165].)

[fol. 129] In this case the petition shows no clear, legal right to an order of mandamus; in fact, it clearly shows the exact contrary.

Indeed, except for the language complained of, the entire petition, the prayer for relief therein, the notice thereon and the title itself fully demonstrate that this proceeding is one in the nature of certiorari and not in the nature of mandamus.

In such a situation, the language complained of is neither necessary nor proper.

Respondent contends that the language in the prayer for relief which seeks an order "annulling the respondent's determination *and directing the respondent to grant petitioner's application for an extension of its license*" taken together with the language complained of in paragraph "15" of the petition, establishes the proposition that petitioner seeks to make this proceeding one in the nature of mandamus.

This contention appears to be without merit, since in a proceeding in the nature of certiorari such a prayer for relief is entirely proper.

After all, what petitioner seeks is the granting of its application; that is the ultimate relief sought by it, whether it proceeds by way of mandamus or by way of certiorari.

Petitioner clearly could not obtain approval of its application in the situation existing in this case in a proceeding by way of mandamus, since there has been no failure of a discharge of a duty specifically enjoined upon respondent by law. The law required respondent to act upon petitioner's application; this he did; accordingly, mandamus will not lie.

[fol. 130] Petitioner might, upon its review of the determination of the respondent, obtain an order directing the

approval of its application for an extension, in a certiorari proceeding, depending entirely upon the conclusion of the Appellate Division.

The Appellate Division, depending upon its conclusion, after its review, can affirm the determination; or annul the same and remit the matter to the respondent for further consideration; or annul the determination and order the approval of the application, if it concludes, upon its review, that petitioner has a clear, legal right to such approval.

Certainly, in the past, the Appellate Division has annulled the determination of the commissioner and directed the approval of the application.

In the Matter of Eisenstein v. DuMond, 268 A. D. 320, a certiorari proceeding, the determination of the commissioner was annulled and the matter remitted to the commissioner.

In the Matter of Elite Dairy Production v. Ten Eyck, 271 N. Y. 488, also a certiorari proceeding, the Court of Appeals modified the order of the Appellate Division by striking out the "direction to issue a license" and remitted the matter to the commissioner with instructions to proceed in accordance with its opinion.

In the Matter of Dusingherre v. Noyes, 259 A. D. 582, reversed 284 N. Y. 304, also a certiorari proceeding, the Appellate Division annulled the determination of the commissioner and directed the issuance of a license. The Court [fol. 131] of Appeals reversed the Appellate Division and confirmed the determination of the commissioner. The reversal was on the merits and did not affect the proposition that, in a proper case, in a certiorari proceeding, the Appellate Division may reverse the determination of a commissioner and direct the granting of the application of a petitioner.

It seems quite clear that in this proceeding, in the nature of certiorari, the Appellate Division has the power, and the right, in its ultimate determination, to direct approval of petitioner's application; it is equally clear, on the facts set up in the petition, that such a direction could not issue in a proceeding in the nature of mandamus.

It is equally true that a different problem is presented for solution in the certiorari proceeding from that which is presented in a mandamus proceeding, even though the



ultimate result sought by petitioner in either case is the same, viz., approval of its application.

If that result were ultimately obtained, however, it would necessarily be for different reasons, both in law and in fact, if obtained in the one proceeding as against the other.

The petitioner's right to the relief sought, if it exists and can be established, is not affected by the removal from its petition of the language complained of; on the other hand, respondent is affected by its being permitted to remain, since his meeting of the issue tendered is different in the mandamus proceeding from what it is in the certiorari proceeding.

[fol. 132] Since the facts set forth in the petition show, beyond peradventure, that petitioner has no clear, legal right to a remedy by mandamus, the language complained of should be eliminated. Indeed, if it were permitted to remain, it could not be established, as the remaining allegations of the petition plainly demonstrate.

Accordingly, the motion of respondent to dismiss, as a matter of law, that part of the petition found in paragraph "15" thereof, which reads as follows:

"Petitioner respectfully submits that the Order in question, in refusing to grant an extension of the license to which petitioner was entitled, constituted a failure on the part of the respondent to perform a duty of the respondent enjoined upon him by law"

is granted.

Perhaps it would be more accurate to say the language quoted should be stricken from the petition.

If the determination of the commissioner was erroneous, it may well be that so far as the ultimate factual result is concerned, the one aggrieved may regard such erroneous determination as a failure to perform a legal duty; in a legal sense, such as is contemplated in Article 78 of the Civil Practice Act, affording the remedy in the nature of mandamus; that, of course, is not so.

The motion of the petitioner that the proceedings herein [fol. 133] be transferred and referred to the Appellate Division, Third Department, for determination, with the language complained of and hereinbefore quoted eliminated from the petition, is granted.

Original petition and notice, with proof of service, and respondent's answer and notice of motion transmitted to

the attorneys for petitioner, who will submit an order, in accordance with this opinion.

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[fol. 134] STIPULATION WAIVING CERTIFICATION

Pursuant to § 170 of the Civil Practice Act, it is hereby stipulated that the papers as hereinbefore printed consist of true and correct copies of the notice of motion, petition, answer and return, and all the papers used before the Court below upon the motion, and the whole thereof, now on file in the office of the Clerk of the Supreme Court of the State of New York, County of Albany.

Certification thereof, pursuant to § 616 of the Civil Practice Act, is hereby waived.

Dated: Albany, New York, August —, 1946.

Whalen, McNamee, Creble & Nichols, Attorneys for  
Petitioner. Donald L. Brush, Attorney for Re-  
spondent.

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[fol. 135] IN SUPREME COURT OF NEW YORK, APPELLATE  
DIVISION, THIRD JUDICIAL DEPARTMENT

DECISION

In the Matter of the Application of H. P. Hood & Sons, Inc., Petitioner, for an order under Article 78 of the Civil Practice Act, to review a determination made by C. Chester DuMond, as Commissioner of Agriculture and Markets of the State of New York, Respondent.

Proceedings under Article 78 of the Civil Practice Act to review part of the determination of the respondent which granted petitioner, H. P. Hood & Sons, Inc., a milk dealer's renewal license to operate three milk plants in this State and denied the application for a license to establish and operate a fourth milk plant at Greenwich, New York.

Respondent contends that as the petitioner applied for and accepted a license to operate three milk plants in this State, it is precluded from making any attack upon the order which also denied a license to establish and operate a fourth plant. The applications were separately made and separately considered. There is no merit in the contention urged.

The Court at Special Term granted a motion to strike from the petition a paragraph which dealt with a legal issue involved. The issues involved were transferred to this Court and can there be disposed of (*Matter of Newbrand v. City of Yonkers*, 285 N. Y. 164 at page 174). The [fol. 136] statute provides that no license to operate a milk plant shall be issued by the Commissioner unless he is satisfied, among other things, that such issuance would not tend to a destructive competition in a market already adequately served, and that the issuance of the license is in the public interest (Sec. 258c of the Agriculture & Markets Law). Large discretion is vested in the Commissioner (Sec. 254 of the Agriculture and Markets Law). That discretion has not been abused (*Matter of Dusinger v. Noyes*, 284 N. Y. 304; *Matter of Kraft Cheese Co., Inc. v. Noyes*, 263 A. D. 761; *Matter of Elite Dairy Products v. Ten Eyck*, 271 N. Y. 488). The record justifies the conclusion reached.

Determination confirmed with \$50.00 costs and disbursements.

Heffernan, Brewster, Foster and Lawrence, JJ., concur.  
Hill, P. J., concurs, in a separate memorandum.

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[fol. 137] IN SUPREME COURT OF NEW YORK, APPELLATE  
DIVISION, THIRD DEPARTMENT

#### CONCURRING MEMORANDUM

HILL, P. J.:

The language of the statute (Agriculture & Markets Law, Sec. 258-c) does not limit its scope, as contended by appellant, to benefits to be obtained for producers of milk. The clause concerning destructive competition, "in a market already adequately served" seems to apply to the ultimate purchasers of milk for domestic consumption, and contemplates an over-supply that would be injurious to the vendors rather than the producers. The requirement that the license should not be granted unless "in the public interest" is broad and inclusive. In *Wolf Packing Co. v. Court of Industrial Relations of Kansas* (262 U. S. 522) consideration was given to "the small extent of the injury" (p. 543) because of the limited amount of busi-



ness done by the Packing Company. Here one hundred fifty cans of milk is a relatively inconsequential amount. In *People v. Nebbia* (262 N. Y. 259; 291 U. S. 502) it was determined that the production of milk was a business which might be regulated in the public interest and for the public welfare. That case dealt with the fixing of prices. The matter of public health as affected by an inadequate supply of milk was considered in *State v. Auclair* (110 Vt. 147; 4 Atl. 2nd 107, 112). Were we to adopt the Vermont authority, the claimed possible shortage in "local markets such as Troy" may furnish a ground for the denial.

[fol. 138] At a Term of the Appellate Division of the Supreme Court, held in and for the Third Judicial Department, at the Court House in the City of Albany, New York, commencing on the 12th day of November, 1946.

Present: Honorable James P. Hill, Presiding Justice; Honorable Christopher J. Heffernan, Honorable O. Byron Brewster, Honorable Sydney F. Foster, Honorable Ellsworth C. Lawrence, Associate Justices.

#### ORDER OF CONFIRMATION

Petitioner H. P. Hood & Sons, Inc., having commenced the above entitled proceeding to review a determination of the respondent Commissioner of Agriculture and Markets of the State of New York made April 30, 1946, denying petitioner's application for an extension of its milk dealer's license to permit the equipment and operation of a milk plant at Greenwich, New York; and said proceeding having been duly referred to this court by the Albany County Special Term; and the matter having duly come on to be heard at the September, 1946, Term of this court; and John R. Titus, Esq., of counsel, having been heard for petitioner (Whalen, McNamee, Creble & Nichols, Esqs., appearing as petitioner's attorneys); and Robert G. Blabey, Esq., of counsel, having been heard for the respondent Commissioner of Agriculture and Markets (Donald L. Brush, Esq., appearing as respondent's attorney); and due deliberation having been had; and this court by its decision [fol. 139] handed down November 13, 1946, having unanimously confirmed the commissioner's determination, so reviewed with Fifty Dollars (\$50.00) costs and disbursements; now, therefore, it is

Ordered, that the commissioner's determination as aforesaid be and the same hereby is confirmed with Fifty Dollars (\$50.00) costs and disbursements.

Heffernan, Brewster, Foster and Lawrence, JJ., concur.  
Hill, P.J., concurs, in a separate memorandum.

John S. Herrick, Clerk.

#### NOTICE OF ENTRY

SIRS:

Please take notice of an Order of which the within is a copy duly granted in the within entitled action entered in the office of the Clerk of the Appellate Division, Third Judicial Department, on the 18th day of November, 1946, a true copy of which was thereafter entered in the office of the Clerk of the County of Albany on the 20th day of November, 1946.

Dated, Albany, N. Y., November 20, 1946.

Donald L. Brush, Counsel to the Department of Agriculture and Markets and Attorney for Respondent,  
Office and P. O. Address, N. Y. State Office Building, Albany, N. Y.

To: Whalen, McNamee, Creble & Nichols, Esqs., 75 State Street, Albany, New York, Attorneys for Petitioner.

[fol. 140] IN COURT OF APPEALS OF NEW YORK

Present: Hon. John T. Loughran, Chief Judge, Presiding.

In the Matter of The Application of H. P. Hood & Sons, Inc., Petitioner,

For an order under Article 78 of the Civil Practice Act to review a determination made by C. Chester DuMond, as Commissioner of Agriculture & Markets of the State of New York, Respondent

ORDER GRANTING LEAVE TO APPEAL—April 17, 1947

A Motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the petitioner herein, and papers having been duly submitted thereon, and due deliberation thereupon had:

Ordered that the said motion be and the same hereby is granted.

A copy.

Raymond J. Cannon, Deputy Clerk. (Seal)

[fol. 141] IN SUPREME COURT OF NEW YORK, ALBANY COUNTY,

[Title omitted]

NOTICE OF APPEAL TO COURT OF APPEALS

To: Donald L. Brush, Esq., Attorney for Respondent. John S. Herrick, Esq., Clerk of the Appellate Division, Third Department. Donald L. Lynch, Esq., Clerk of the County of Albany.

SIRS:

Take Notice that pursuant to an order of the Court of Appeals duly granted and entered herein April 17, 1947, the above named petitioner H. P. Hood & Sons, Inc., hereby appeals to the Court of Appeals from the order of the [fol. 142] Appellate Division of the Supreme Court herein entered November 18, 1946, and a copy of which was thereafter entered in the office of the Clerk of the County of Albany on the 20th day of November, 1946, confirming a



determination of respondent, made herein April 30, 1946, which denied petitioner's application for an extension of petitioner's milk dealer's license to permit the equipment and operation of a milk plant at Greenwich, New York.

Dated: May 12, 1947.

Yours, &c., Whalen, McNamee, Creble & Nichols,  
Attorneys for Petitioner, Office and Post Office Ad-  
dress, 75 State Street, Albany, New York.

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[fol. 143] STIPULATION WAIVING CERTIFICATION

Stipulated, pursuant to § 170 of the Civil Practice Act, that the foregoing return on appeal, consisting of the record in the Appellate Division herein, decision of the Appellate Division, concurring opinion per Hill, P. J., Appellate Division's order of confirmation, order granting leave to appeal to the Court of Appeals and notice of appeal to the Court of Appeals, contains true and correct copies of the whole of the respective originals thereof now on file and of record in the office of the Clerk of the County of Albany, whose certification thereof is hereby waived.

Dated, May 19, 1947.

Whalen, McNamee, Creble & Nichols, Attorneys for  
Appellant; Donald L. Brush, Attorney for Re-  
spondent; Robert C. Blabey, of Counsel.

[fol. 144]

## COURT OF APPEALS

STATE OF NEW YORK, ss:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 11th day of March, in the year of our Lord one thousand nine hundred and forty-eight, before the Judges of said Court.

Witness, The Hon. John T. Loughran, Chief Judge, Presiding. John Ludden, Clerk.

[fol. 145]

REMITTITUR—March 12, 1948

In the Matter of the Application of H. P. Hood & Sons, Inc., Appellant, for an Order, etc., to Review a Determination Made by C. CHESTER DUMOND, as Commissioner of Agriculture and Markets of the State of New York, Respondent

Be it Remembered, That on the 28th day of May in the year of our Lord one thousand nine hundred and forty-seven, H. P. Hood & Sons, Inc., the appellant in this cause, came here unto the Court of Appeals, by Whalen, McNance, Preble & Nichols, its attorneys, and filed in the said Court a Notice of Appeal and return thereto from the Order of the Appellate Division of the Supreme Court in and for the Third Judicial Department. And C. Chester Du Mond, as Commissioner of Agriculture and Markets, etc., the respondent in said cause, afterwards appeared in said Court of Appeals by Donald L. Brush, his attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

[fol. 146] Whereupon, The said Court of Appeals having heard this cause argued by Mr. John R. Titus of counsel for the appellant, and by Mr. Robert G. Blabey of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the Order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed with costs.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

W. H. M., J. S. C.

[fol. 147] Therefore, it is considered that the said Order be affirmed with costs as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

John Ludden, Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE

Albany, March 12, 1948.

I Hereby Certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

John Ludden, Clerk. (Seal of the Ct. of Appeals, State of New York.)

[fol. 148] At a Special Term of the Supreme Court held in and for the County of Albany at the Court House in the City of Albany, New York, on the 18th day of March, 1948.

Present: William H. Murray, Justice.

In the Matter of the Application of H. P. Hood & Sons, Inc., Petitioner-Appellant, for an Order under Article 78 of the Civil Practice Act to Review a Determination Made by C. CHESTER DU MOND, as Commissioner of Agriculture and Markets of the State of New York, Respondent

The appellant H. P. Hood & Sons, Inc., having appealed to the Court of Appeals of the State of New York from an order of the Appellate Division of the Supreme Court, Third Judicial Department, entered in the office of the Clerk of said Appellate Division on the 18th day of November, 1946, and a true copy thereof entered in the office of the Clerk of the County of Albany on the 20th day of November, 1946, which said Appellate Division order confirmed with Fifty Dollars (\$50.00) costs and disbursements a determi-



nation of the respondent Commissioner of Agriculture and Markets of the State of New York made April 30, 1946, denying appellant's application for an extension of its milk dealer's license to permit the equipment and operation of a milk plant at Greenwich, New York; and the said appeal having duly come on to be heard and having been argued in the said Court of Appeals by John R. Titus, Esq., of counsel, for the appellant, and by Robert G. Blabey, Esq., of counsel, for the respondent; and after due deliberation had thereon, the Court of Appeals did order and ad- [fol. 149] judge that the order of the Appellate Division of the Supreme Court appealed from as aforesaid be affirmed with costs,

Now, on reading and filing the remittitur from the said Court of Appeals dated March 12, 1948, and upon motion of Donald L. Brush, Esq., Robert G. Blabey, Esq., of counsel, attorneys for the respondent Commissioner of Agriculture and Markets of the State of New York, it is

Ordered that the order and judgment of the Court of Appeals as aforesaid be and the same hereby are made the order and judgment of this Court, and that the order of the Appellate Division appealed from herein be and the same hereby is affirmed with costs; and

It Is Further Ordered that a judgment of this Court be and hereby is directed to be entered herein by the Albany County Clerk in favor of the respondent commissioner herein and against the appellant H. P. Hood & Sons, Inc., for the costs awarded to the respondent to be taxed by the Albany County Clerk on the entry of judgment and to be entered and docketed in his office and enforced as a final judgment in an action.

Enter: Albany County, March 18, 1948.

William H. Murray, Justice of the Supreme Court.

[fol. 150]

## STATE OF NEW YORK

## SUPREME COURT, ALBANY COUNTY

In the Matter of the Application of H. P. HOOD & SONS, INC.,  
Petitioner-Appellant, for an Order under Article 78 of  
the Civil Practice Act to Review a Determination Made  
by C. CHESTER DU MOND, as Commissioner of Agriculture  
and Markets of the State of New York, Respondent

## JUDGMENT FOR COSTS

An order of the Supreme Court in the above entitled matter made and entered in the Albany County Clerk's office on the 18th day of March, 1948, having directed the entry of a judgment here in favor of the above named respondent Commissioner of Agriculture and Markets of the State of New York and against the above named appellant H. P. Hood & Sons, Inc., for the costs awarded to said respondent by the order and remittitur of the Court of Appeals herein dated the 12th day of March, 1948; and the said remittitur of the Court of Appeals having been duly filed and entered herein; and the said order of the Supreme Court having directed that the order of the Court of Appeals be made the order of this Court;

Now, on motion of Donald L. Brush, Esq., Robert G. Blabey, Esq., of counsel, attorneys for the respondent, it is hereby

Ordered, Adjudged, and Decreed that the respondent Commissioner of Agriculture and Markets of the State of New York, whose official residence address is the Governor Alfred E. Smith State Office Building in the City of Albany, New York, recover of the appellant, H. P. Hood & Sons, Inc., whose principal office address is 500 Rutherford Avenue, Boston, Massachusetts, the sum of Two Hundred Sixteen Dollars and Ninety Cents (\$216.90), being his costs and [fol. 151] disbursements as taxed and that the respondent commissioner have execution thereof.

Judgment signed and entered this 31 day of March, 1948.

Donald L. Lynch, Albany County Clerk.

[fol. 152] In the Matter of H. P. HOOD & SONS, INC., Appellant, against C. CHESTER DU MOND, as Commissioner of Agriculture and Markets of the State of New York, Respondent

Decided March 11, 1948

Appeal, by permission of the Court of Appeals, from an order of the Appellate Division of the Supreme Court in the third judicial department, entered November 18, 1946; (transferred to the Appellate Division by an order of the Supreme Court at Special Term, entered in Albany County) which unanimously confirmed a determination of respondent Commissioner denying an application for an extension of petitioner's milk dealer's license to permit the equipment and operation of a milk plant at the village of Greenwich.

John R. Titus for appellant.

Robert G. Blaby and Donald L. Brush for respondent.

DESMOND, J.

We granted leave to appeal here, to review a unanimous confirmation by the Appellate Division of a determination of the State Commissioner of Agriculture and Markets. The commissioner had denied the application of petitioner for an extension of its milk dealer's license issued pursuant to section 257 of the Agriculture and Markets Law. The extension would have permitted petitioner to operate a milk receiving plant at Greenwich, New York, in addition to petitioner's other similar plants already licensed and operating at Eagle Bridge, Salem and Norfolk, in this State. Eagle Bridge is in Rensselaer County and Salem and Greenwich are in Washington County, Rensselaer County being adjacent to Washington County on the south, and both these counties being on the easterly edge of New York State, bordering on Massachusetts and Vermont. Petitioner's Norfolk establishment is in St. Lawrence County in another part of New York State, and serves a different area and a different group of milk producers. The present Eagle Bridge and Salem depots, however, are quite close together and the proposed Greenwich plant, for which a license has been refused, is ten miles from Salem and twelve miles from Eagle Bridge. Petitioner's main contentions on the appeal are: first, that the commissioner's order is violative of the Commerce Clause of the United States Constitution (art. I,



§ 8; cl. 3); and second, that the order is not supported by the commissioner's findings made after the hearings conducted by him, or by the evidence. The two concurring opinions in the Appellate Division<sup>o</sup> both said that the commissioner had acted on adequate proof and appropriate findings. Neither opinion discussed the constitutional point and it was not raised in the petition for review under article 78 of the Civil Practice Act. However, it was argued in petitioner's brief in the Appellate Division, and so is available to appellant in this court (see *Jonge-Bloed v. Erie R. R. Co.*, 296 N. Y. 912).

Petitioner's business is wholly interstate in character. It purchases, at its several locations, milk delivered there by farmer-producers, weighs, tests and cools it (if not already cooled), then ships it, the same day, without any processing, to the Boston, Massachusetts, marketing area. Petitioner's procedures at the proposed Greenwich plant would be exactly the same. It appeared—and the commissioner found—that the new Greenwich plant would to some extent serve the convenience of petitioner and its suppliers. The Eagle Bridge and Salem depots have experienced some difficulty in the past in handling, before the 9:00 A. M. daily deadline for shipment out, the large quantities of milk brought there during the flush season. If the Greenwich facilities were added, petitioner would divert thither, and away from Salem and Eagle Bridge, some 300 cans of milk now arriving daily at Salem and Eagle Bridge, and would allow, but not require, any individual dairy farmer to use the depot nearest his farm. In addition, petitioner hoped, when and if it should go into operation at Greenwich, to take on some twenty to thirty new producers at the new place. Several other milk dealers have plants near Greenwich and some of them have facilities for handling more milk than they are now getting. The commissioner found all these things as facts, and found also that some Troy, New York, retail milk distributors now obtain milk in the area where applicant purchases and that "the supply of milk for the Troy market during the last short season of October through January was inadequate." It was the commissioner's "conclusion" that the opening of another milk plant by petitioner and the taking on by it of producers now delivering to other dealers, would tend to reduce the volume at those other dealers' plants, thus tending to increase milk handling costs there, that

there would be a tendency to deprive Troy and other local markets of their milk supply in flush seasons, that all producers now had outlets for their milk; that the licensing of the new Greenwich establishment would tend to destructive competition in an already adequately served market, and would not be in the public interest.

Petitioner's whole business, present and proposed, is interstate commerce (*United States v. Rock Royal Co-op., Inc.*, 307 U. S. 533; *Milk Control Board v. Eisenberg Farm Products*, 306 U. S. 346). A State cannot embargo the importation or exportation of legitimate articles of trade (see *City of Buffalo v. Reavey*, 37 App. Div. 228) since, if such power existed, to quote the classic language of *Oklahoma v. Kansas Natural Gas Co.* (221 U. S. 229, 255): "Pennsylvania might keep its coal, the Northwest its timber, the mining States their minerals." The order here attacked is of course not a direct prohibition of such exports, nor a prohibition in form, but petitioner insists that it is a prohibited interference with interstate commerce, since, according to petitioner, it "by its necessary operation prevents, obstructs or burdens such transmission" (*Pennsylvania v. West Virginia*, 262 U. S. 553, 596-597; see *People v. Cunard White Star, Ltd.*, 280 N. Y. 413). Similar attacks were made in *Milk Control Board v. Eisenberg Farm Products* (*supra*) on the enforcement, against milk bought for interstate shipment, of a Pennsylvania statute requiring that milk dealers like this petitioner, obtain State licenses, file surety bonds and pay to producers at least the minimum price fixed by the Pennsylvania Milk Control Board. The Supreme Court, by Justice Roberts, said (p. 352) that the real question was whether the prescription of prices fixed in an effort to control local conditions in the milk business, "constitutes a prohibited burden on interstate commerce, or an incidental burden which is permissible until superseded by Congressional enactment." Describing the Eisenberg Company's purchase of milk at its receiving stations in Pennsylvania as a "local business" and "essentially local in Pennsylvania," the Supreme Court pointed out that the receiver's transaction with the farmer was completed when the price was paid and that the receiver thereafter engaged "in conserving and transporting its own property." Distinguishing a number of earlier cases, the *Eisenberg* decision held that in licensing these dealers and fixing their prices, Pennsylvania did not "essay

to regulate or to restrain the shipment of the respondent's [fol. 154] milk into New York or to regulate its sale or the price at which respondent may sell it in New York.' We say the same as to the action of the New York commissioner (respondent here) in dealing with an essentially local situation. Petitioner, under its present, unenlarged license, may still buy, at its Eagle Bridge, Salem and Norfolk locations, as much milk as it can get, and may send it where it will. Petitioner proved that an additional location would serve the convenience of some of the dairymen and of itself. The commissioner, however, found that the producers were adequately served by existing facilities, and that petitioner's proposed new branch would have a tendency to draw customers and milk away from local markets, and set up undesirable competition between petitioner and other dealers. That was the kind of local milk situation with which the State is authorized to deal (*Nebbia v. New York*, 291 U. S. 502) and any interference with the free flow of interstate commerce was incidental only. It may be remarked that there is here no showing as to how much New York milk is exported across the State line. Absent such a showing, we cannot tell what proportion such interstate shipments bear to the whole of the production as to which the State licensing statute operates. In the *Eisenberg* case, where it was shown that only a small fraction of the milk produced in Pennsylvania went out of the State the court found that to be another reason why "the effect of the law on interstate commerce is incidental and not forbidden by the Constitution, in the absence of regulation by Congress" (306 U. S. at p. 353). New York's activity, it seems to us, is within the "residuum of power in the state to make laws governing matters of local concern which nevertheless in some measure affect interstate commerce or even, to some extent, regulate it" (see *Southern Pacific Co. v. Arizona*, 325 U. S. 761, 767). Petitioner's answer to all this is that the determination here does not regulate, but in fact prohibits. As we see it, there is neither form nor substance of prohibition, only permissible regulation of local business.

Petitioner argues, further, that the commissioner's order here under attack, conflicts with Federal milk order No. 4 issued pursuant to the Agricultural Marketing Agreement Act of 1937 (U. S. Code, tit. 7, § 671 et seq.) which order regulates the handling, price, etc., of milk sold in interstate commerce in the Boston area and which Federal order is



valid as to this petitioner and its business (see *Hood & Sons v. United States*, 307 U. S. 588). We see no conflict between the Federal control set up by order No. 4 and the local licensing of dealers, here under scrutiny. If the New York licensing laws conflict with Federal order No. 4, then the Pennsylvania licensing held valid in the *Eisenberg* case (*supra*), was equally inconsistent with the Secretary of Agriculture's so-called "New York Price Order," or order No. 27, effective September 1, 1938, similar to the Boston order No. 4 and called to the Supreme Court's attention in the briefs in the *Eisenberg* case which was decided in February, 1939.

Petitioner's final attack on the commissioner's determination assails it as unreasonable and unsupported by any evidence. The Agriculture and Markets Law (§ 258-e) forbids the issuance of such a license "unless the commissioner is satisfied . . . that the issuance of the license will not tend to a destructive competition in a market already adequately served, and that the issuance of the license is in the public interest." The commissioner, as hereinabove noted, found, in petitioner's proposal, a tendency to destructive competition in an adequately served market, and that the public interest would not be served thereby. There was a basis for those findings, and we could not oppose any contrary views of ours, if we had any, to that of the State officer commissioned to make such [fol. 155] decisions.

The order should be affirmed, with costs.

Loughran, Ch. J., Lewis, Conway, Thacher, Dye and Fuld, JJ., concur.

Order affirmed.

#### CERTIFICATION OF TRANSCRIPT

STATE OF NEW YORK, ss:

Office of the Clerk of the County of Albany

I, Donald L. Lynch, Clerk of the said County of Albany and also Clerk of the Supreme Court, being courts of record held therein, do hereby certify that I have compared the annexed copies of remittitur from the Court of Appeals, order and judgment with the originals thereof filed in this office on the 18th day of March, 1948, and that the same are

correct transcripts therefrom and of the whole of said originals, and I further certify that I have compared the annexed copy of the opinion of the Court of Appeals in said case with the original thereof now on file in this office and that the same is a correct copy thereof and of the whole of said original opinion.

In Testimony Whereof, I have hereunto set my hand and affixed my seal of office this 12th day of May, 1948.

Donald L. Lynch, Albany County Clerk. (Seal.)

(6598)

[fol. 157] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 11, 1948

The petition herein for a writ of certiorari to the Supreme Court of the State of New York, Albany County, is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: File No. 53,094, New York, Supreme Court, Albany County. Term No. 92. H. P. Hood & Sons, Inc., Petitioner, vs. C. Chester DuMond, Commissioner of Agriculture and Markets of the State of New York. Petition for writ of certiorari and exhibit thereto. Filed June 11, 1948. Term No. 92 O. T. 1948.

(8982)